

**An Assessment of the State of
Democratic Consolidation and Governance
in Guatemala: Late 1996**

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EXECUTIVE SUMMARY

The process of democratization begun in Guatemala in 1984 with the writing of a new constitution has accelerated in the last three years, and especially in 1996. Concurrently, negotiations between the Government of Guatemala and the *Unidad Revolucionaria Nacional de Guatemala* (URNG) have yielded six "substantive accords," all signed since an *autogolpe* (suspension of constitutional liberties and democratic institutions) failed in May of 1993. A definitive "firm and lasting" Peace Accord is to be signed in Guatemala City on December 29, 1996. The peace process creates a more positive set of circumstances for democratic transition and consolidation than has existed in over four decades. Yet not all Guatemalan actors may be equally enthusiastic about the current political opening. Hence, wise policy choices must be made by Guatemalans and supported by the international community of donors in the immediate future.

Three types of actors and various types of institutions will be crucial to democratic consolidation. In general, three broad-ranging challenges to democratic consolidation can be envisioned. Those challenges are: (i) broadening the vision of the political community on behalf of which democracy is to be constructed, (ii) reducing the use of coercive force in Guatemalan society and politics, and (iii) creating an environment conducive to citizen participation in the political process. Each challenge may be subsumed under the overall strategic objective of the creation of a more participatory democratic polity. Among actors particularly crucial to the processes of consolidation we would see (i) organized groups in civil society, including a number (such as women and indigenous peoples) until recently never organized effectively for expressing their interests in the policy-making process, (ii) the military and police, and (iii) the URNG and various "uprooted peoples" (ex-combatants, exiles, internal migrants seeking to avoid violence). Other actors also matter. Many institutions must perform better than they have previously for democracy to be consolidated, including the Congress, the courts and a wider justice system (including a to-be-civilianized national police, prosecutorial offices and a still incipient public defender system), political parties, and local government.

I. INTRODUCTION

A. Peace and Democracy

The Republic of Guatemala is poised at the brink of an historic opportunity for self-redefinition. After forty two years of tragic history,¹ the opportunity to create an open, inclusive, competitive and participatory polity beckons. An important transition began in 1984-85 and has accelerated between 1993 and 1996, but is not completed. In 1996, for the first time in decades the consolidation of democracy in Guatemala is conceivable. Yet that is far from a certain outcome. It cannot be assumed that all Guatemalans with access to political resources will wish the post-1985 change to be sustained.

Yet an opportunity for democratic consolidation has been won by Guatemalans (not foreigners). Guatemalans have taken charge of their own destiny via the negotiation of agreements on political structures with which to address centuries-long patterns of socio-economic exclusion from the benefits of economic growth. In the Guatemalan case, the bargaining was longer and organizationally more complicated than elsewhere in Central America,² leading to elaborate Peace Accords, with a definitive agreement signed on 29 December 1996.

Crucial moments in this process include the election in 1985 of a Constituent Assembly and the consequent approval of a new Constitution in the same year; the election of civilian presidents in 1985, 1990, and 1995; the coalescence of domestic actors (businesspeople, academics, activists, NGOs, junior military officers) and international actors (international organizations, foreign governments, international counterparts in the NGO community) to mobilize resistance successfully to an attempted *autogolpe*³ by President Jorge Serrano in 1993; the succession of the Human Rights Ombudsman, Ramiro de León Carpio, to the presidency to fill out the term of Serrano; de León Carpio's *depuraci*⁴n ("cleansing" of corrupt officials) of the Congress and Court System via referenda and special elections in the balance of the Serrano term; and President Alvaro Arzú's energetic moves to assert civilian control over the military and to clean out corruption in state agencies in 1996.

Among the very most hopeful elements in this post-1985 process have been the signing of a Framework Agreement for the Resumption of Peace Negotiations in January 1994, under the aegis of the United Nations as moderator, and the signing of six subsequent "substantive" Peace Accords.⁴ Taken together, these six agreements and the "implementing accords" which are to follow, provide a point of departure for as thorough a reconstruction of Guatemala as could be imagined. If fully implemented, Guatemala would be a very different country. The political system can move from one based on fear, coercion, and corrupt insider trading to one based on popular participation, accountability of public officials (including the military), the rule of law and meaningful elections.

The Peace Accords represent a threshold between the transition to democratic practices and the eventual consolidation of them.⁵ Using one illustrative framework (USAID Global Bureau), Guatemala may be described as being in the "late transition stage" of movement toward democracy (see Table 1). Of six criteria for having completed said stage, Guatemala seemingly meets three, and partially meets two. If the Peace Accords were fully implemented, the sixth would also be met, as would the two partially attained criteria.

**Table 1: Global Bureau Criteria
for "Late Transitional Status"**

	Criterion	Condition Met/Unmet?
1.	Legal obstacles to participation removed.	Met

2.	Regulatory codes for civil society based on freedom to associate.	Met
3.	Free and fair multiparty elections occur and an elected government exists.	Met
4.	Diversity of information flow sufficient to permit effective participation by an active citizenry.	Met in Spanish, issues of multi-lingualism remain.
5.	Widespread agreement on the rules of the game, and agreement enshrined in a new Constitution.	Met, if the Peace Accords are implemented.
6.	Principles of transparency and accountability are institutionalized to ensure that those in power continue to respect the rules of the game and provide a sustainable basis for political legitimacy.	Unmet, but progress observable in 1993 - 1996.

Scholars writing on democratization processes have proposed a number of other analytical frameworks for addressing how democratic "consolidation" differs from "transition."⁶ Their point is that beyond an initial political liberalization and movement toward electoral processes, a number of other things have to occur for democracy to be consolidated. In essence, they argue, like the Global Bureau, is that "mere elections do not democracy make."

J. Samuel Valenzuela, for example, emphasizes that civilian authorities need to resist the claim of non-democratic, unelected elites that they are to enjoy certain "tutelary powers" or that certain areas of public policy-making are to be reserved to them.⁷ Guillermo O'Donnell insists that consolidation of democracy in Latin America requires rooting out a propensity for "particularism" (favoritism to family, clan, *camarilla*, or village) which can coexist with formally democratic procedures. For consolidation to occur, a sense of democratic accountability must be generated among public office-holders and officials which would displace particularism.⁸ Juan Linz and Alfred Stepan argue in recent work⁹ that a consolidated democracy consists of five interrelated subsystems.¹⁰ The strength of the Linz/Stepan analysis is in its focus on how each of the five arenas is necessary for the successful functioning of the other. Guatemala has progress to make on many dimensions, if democratic consolidation is to occur. In subsequent discussions of institutions such literature will be invoked.

B. Social Context

The fundamental feature of the social context of Guatemala is that it is a multi-ethnic society (consisting of Maya, ladinos, Garífuna, and a very small population of Xinca),¹¹ in which cumulative disadvantages have accrued over centuries to indigenous peoples, especially the various Mayan peoples and the Xinca, in spite of the fact that the Mayans were collectively the majority during most of that time. Guatemala has, according to one source, the world's second most unequal distribution of income among 150 countries covered by the World Bank.¹² That distribution of income is strongly correlated with ethnicity, rurality, gender and use of indigenous languages.¹³ The poorest of the Guatemalan poor are rural, indigenous women who speak no Spanish. And the highest concentration of poverty is in the most rural provinces.¹⁴ Yet 33% of the economically active population of Guatemala City,¹⁵ a metropolitan area of nearly three million in 1996, were employed in the "urban informal economy" as street vendors, "car-watchers," shoe-shine boys, domestic servants and the like, a category also highly correlated with

poverty, and which includes a sizable number of indigenous females.¹⁶ Consequently, there are both rural and urban dimensions to exclusion of most Guatemalans from effective access to the benefits of economic growth. The three fourths of Guatemala that is poor is mostly rural, but a million poor Guatemalans (of ten and a half million Guatemalans and seven million poor) live in cities. Among those rural poor, many live in highly isolated areas, days removed from Guatemala City even by car.¹⁷ Effective service delivery is a major logistical problem. As United Nations data reveal, in 1992 "46% of the Guatemalan adult population was illiterate, 6.3 million Guatemalans had no access to health services, and 3.7 million had no access to safe water."¹⁸

Like the rest of Central America, Guatemala suffered a lost decade in the 1980s. Indeed, the economy contracted by an average of 1.5% a year between 1980 and 1992.¹⁹ Since that time, there has been a resumption of growth... with rates of 4.0% (1994), 4.9% (1995), and an estimated 3.8% (1996).²⁰ But as Seligson and others have documented, even sustained economic growth does not at all guarantee improvement in income distribution or even in the alleviation of poverty.²¹

Indeed, the traditional distribution of public spending in Guatemala was highly unlikely to produce improvements in human welfare or in equality. In 1990 Guatemala dedicated only 1.4% of its GDP to education, the lowest percentage in all of Central America... one third of the percentage spent in Costa Rica on education, one half of the comparable percentages in Ecuador and Perú, each of which has a sizable indigenous population.²² Guatemala's spending on public health, while not as abject as its spending on education, was in the lowest half the Central American cases.²³ Given that the ladino population is largely urban and the indigenous population largely rural, the urban bias of service delivery reinforced traditional tendencies toward maldistribution and exclusion of indigenous peoples. Public policy did little or nothing to correct this situation through 1995.

As a cease-fire was in place in 1996, public spending on health and education had improved to 1.41% and 2.22% of the GDP, respectively²⁴. But the projections for the 1997 were once again toward an erosion of social investment in these areas, largely because of fiscal duress. On the positive side, however, the geographic distribution of public spending projected for 1997 did foresee a substantial lessening of overspending on metropolitan Guatemala City (-24.5%) and substantial increases of federal spending in other regions (from 25.7% in the North to 44.7% in the Southeast).²⁵ Since most governmental spending in Guatemala is federal spending, this reorientation could, if sustained, have an impact on the distribution of social welfare and opportunity.

The social context of the mid- to late-1990s was increasingly troubled by the perception of a crime wave - exacerbated in 1996 by a series of kidnappings for ransom. Such data as are available from the Archbishop's Human Rights Office suggest a mixed picture (see Table 2 below). In fact, the number of assassinations recorded in 1994 and 1995 jumped dramatically from the levels recorded between 1991 and 1993.

Table 2: Data on Recorded Violence in Guatemala: 1991-1995

	Extra Judicial Executions	Assassinatio ns	Attempted Violence	Forced Disappearanc es	Torture	Threats
1995	215	1066	249	11	52	36
1994	356	1008	236	401	72	20
1993	248	427	225	451	83	59
1992	204	499	64	11	1	82
1991	575	233	62	144	0	129

Source: Oficina de Derechos Humanos del Arzobispado.

Brief Definitions²⁶:

Extrajudicial executions: Killings by agents of the state or agents protected by agents of the state without due process of law.

Assassinations: Killings reported by the mass media.

Attempted Violence: Attempts to harm persons or property.

Forced Disappearances: Unexplained disappearances from one's family, following legal criteria developed by the UN Working Group on Forcible and Involuntary Disappearances and the Interamerican Human Rights Commission.

Torture: Following the Interamerican Convention on Human Rights, "... all intentional acts to inflict pain, physical or mental suffering on a person during a criminal investigation or as a means to intimidate, to punish or as a 'preventive' instrument."

Threats: When a person or organization is a victim of direct or indirect action with the intent of provoking fear of harm to the target, family members or associates thereof.

But extrajudicial executions dropped from the level attained in 1991. Other crimes decreased substantially in 1995 (forced disappearances and torture). The common perception that "political crimes (extrajudicial executions, forced disappearances and torture) have decreased while "social crimes" have increased appears to be supported by the best available data.²⁷ Certainly, a major source of concern in 1996 was the spate of kidnappings, which reached such a level that Congress reinstituted the death penalty for kidnappings and courts had begun to apply

it by the end of the year.²⁸ We note that data are not easily available on the gender distribution of crime victims, nor on family violence, both reporting lacunae that present problems in seeking to address issues of equity in gender relations.

Citizen concern with insecurity is substantial in 1996.²⁹ This is a concern that may unite indigenous peoples and ladinos, affluent and poor, urban and rural residents. However, it poses a challenge for democratic governance. In the absence of an effective policing and justice system, temptations grow to respond via extra-judicial solutions (among others, lynchings). Consolidation of democracy requires a state of law. Both criminality and extralegal responses thereunto undermine a state of law.

C. Macro-Economic Context in 1996

Among the positive features of the Guatemalan economy are the existence of natural resources, such as petroleum, which enhance the capacity for a measure of national economic autonomy. However, other natural resources in Guatemala, including the excellent soils of some regions, are under ecological duress.³⁰

Economic growth was somewhat slower than had been projected for the first semester of 1996 (3.7-4.0% vs. 5.0% projected), and inflation was running at about an 11% annual rate (vs. 8.6% in 1995), coffee exports held about constant vs. 1995, while sugar exports grew by 32%, and non-traditional exports (NTEs) grew by 35% over the first half of 1995 (slightly more rapidly among agricultural NTEs than among industrial NTEs). Late in 1996, the quetzal was coming under pressure as being overvalued.

Imports did not increase as rapidly as projected in the first semester of 1996, leading to a 10% shortfall of revenue that the government expected to accrue from a Value Added Tax (IVA) on imports and a shortfall of 5% on the revenue expected from tariffs on imports. Slower than expected economic growth also led to shortfalls beneath projected revenues from the Income Tax (-16%) and from the Domestic IVA (-5%). So, while tax revenues grew by 18.7% in the first semester of 1996 (vs. first semester, 1995), revenue had been projected to grow by 31.5%. Consequently, some government spending (such as that projected for health, labor and culture) has lagged behind projections. Overall, however, the bringing online of an increase in the IVA (from 7 to 10%) and other "emergency" tax measures have sustained government spending at roughly 8.5% of GDP and kept the overall financial balance of the Central Government in surplus (at +0.4% of GDP). It should be noted that tax revenues as a percentage of GDP are lower in Guatemala than anywhere in the hemisphere, with the exception of Haiti.

A tight monetary policy in 1996 has kept commercial interest rates high, drawing money into certificates of deposit and interest-bearing checking accounts. However, USAID economists argue that:

a poor fiscal performance has forced monetary policy to assume the weight of liquidity adjustment through high interest rates... a decline in interest rates requires a stronger public sector financial position.³¹

The shortfalls in tax collection in 1996 are a subject of concern in the immediate economic outlook for 1997 and beyond. The immediate government focus on reducing tax evasion, via attacks on corruption in the Customs Agency and elsewhere, may produce both fiscal and public relations benefits.³² However, the Peace Accords commit the government of Guatemala to an expanded array of social and economic expenditures (with 50% increases in education, health and other expenditures foreseen). So continuing attention to fiscal performance is central to actualizing the promise of the Peace Accords, as is making real the commitment of the September 1996 accord to decrease military spending by one third by 1999 so as to free up revenues for social spending. There is ample room for increased fiscal effort to finance the Peace Accords and other necessary service of government without impairing economic growth objectives. The government of Guatemala is not yet too large, whatever the challenges that remain in making it transparent, efficient and responsive. Sheer size of and over consumption of resources by the public sector is not yet a major macroeconomic concern in Guatemala. The *quality of governance* is the issue.

D. Crucial Issues of the Peace Accord Era.

1. Background Question: What is the Political Community?

Juan Linz and Alfred Stepan have recently argued that: "When thinking about transitions to democracy, many people tend to assume that what is challenged is the non-democratic regime and that with democracy a new legitimate system is established. However, in many countries the crisis of the non-democratic regime is also intermixed with profound differences about what should actually constitute the polity... and which *demos* or *demoi* (populations or populations) should be members of that political community."³³ The Guatemalan Peace Accords address the issue of a more inclusive polity through the agreement to a separate accord "On the Identity and Rights of Indigenous Peoples." This distinguishes the Guatemalan accords from those of neighboring El Salvador, for example. An effort is clearly made to establish the point that Guatemalan state is to serve indigenous peoples in a way that it never has before... via language policy, educational policy, access to the justice system, protection of indigenous lands and the distribution of public resources in a host of ways.

Yet that very agreement has provoked anxiety.³⁴ In 1996 it seems that most urban ladino families are currently thinking about the nature of the political community. Some fear the potential divisiveness of a newly energized indigenous rights movement and exhort *indígenas* and their leaders to remember that "We are all Guatemalans." Others endorse the organization of indigenous peoples, assuming that the problem of exclusion is so grounded in history that there is no immediate danger of "excessive efficacy" in the political demand-making by indigenous peoples.

An ideal outcome of democratization in Guatemala might be the condition where identities are cumulative... where a day would come where persons could say "Yes, I am K'ichee, but I am also Mayan, Guatemalan and perhaps even Central American" just as some say "Yes, I am Catalán, but also a Spaniard and a European."³⁵ Wise public policy for consolidating democracy in Guatemala might well seek to enhance the

holding of multiple, cumulative identities by indigenous peoples. Yet "nationalists, representing both the dominant nationality in the state and the oppressed nationality, want people to abandon such identities and make either-or choices."³⁶

Illustrative of the anxiety that reigns in Guatemala over ethnicity is the politics of counting indigenous peoples. The 1981 national census employed putatively objective indicators of ethnicity (whereby the census-taker made the determination of ethnicity, following specified criteria) and yielded an estimate of 41.6% indigenous peoples.³⁷ In some part because of criticisms from a renascent indigenous rights movement, the methodology was changed in 1994 to a subjective (self-identification) procedure, which, to the dismay of defenders of indigenous peoples, yielded an estimate of only 42.8%, i.e., only slightly higher. To be certain, undercounting of indigenous peoples in remote areas like the Petén is probable in the 1994 census.³⁸ Critics of the official estimates used population projections and differing assumptions in the early 1990s to estimate a percent indigenous of 61%.³⁹

Certain things are clear about the internal composition of the indigenous peoples. The largest groupings are the K'ichee (estimated at 36% of the indigenous population), Mam (18%), Kaqchi (Kaqchikel) (17%), Q'eqchi (12%), after which no group exceeds four percent.⁴⁰ What is disputed is the degree to which a common world view is shared across these groups. Currently, leaders of the indigenous peoples seek to articulate principles that they hold to be common among all Mayans.⁴¹ The centuries-long exclusion of indigenous peoples and the lack of written traditions make it possible for unsympathetic ladinos to question such claims.

In such a setting, the issue of "on behalf of which community" a new democracy is to be created is fundamental. New democratic institutions must both address the anxiety existing among ladinos and prove to be responsive to a sizable segment of the national community that has previously been excluded on the basis of language and ethnicity. That segment embraces somewhere between 42% and 61% of the national community. Given that the estimates of poverty in Guatemala embrace 75% of the national population, it is clear that a model of development must be devised which brings benefits to a sizable number of poor ladinos as well as to the overwhelming bulk of the indigenous peoples. The challenges confronting democratic institutions are substantial - including the elaboration of a model of development that distributes human welfare far more widely than has ever been the case in Guatemala while avoiding zero-sum conceptualizations of the interests of ethnic communities.

While not highlighted as fully by the Peace Accords, the issue of "whether women form part of the political community" is equally as central. In Guatemala, women register and vote less frequently than do men (18-20% gaps in reported registration rates, 19% to 23% gaps in reported voting rates).⁴² Women are elected to office far less frequently than are men (15% of the current Congress is female, the

highest percent ever attained). Women hold appointive office much less frequently than do men.⁴³ Women attend school less extensively than do men (mean years attended: women 3.8, men 4.4; percent literate: women 47%, men 63%), thereby sacrificing access to skill-acquisition and credentialing which could permit formal participation in governance. Most importantly, women's interests have only begun to be addressed by the political system in a systematic way.⁴⁴ Consequently, while not as unsettling an issue to the privileged as is ethnicity, envisioning a political community that invites women and Mayan peoples to set an agenda for discussion and to be major voices in making public policy is a challenge that precedes democratization. Without an inclusive vision of the political community, any democratic institutions created will be attenuated and likely to atrophy, rather than to grow.

2. Eliminating the Coercive Use of Force.

An overarching challenge to democratization in Guatemala is to eliminate the coercive use of force for illegitimate purposes. Two dimensions might be identified to this challenge.

a. First are the interrelated questions of creating a state of law, ending impunity for public officials (including those in the police and military) who violate the law, and ending personal insecurity for common citizens, who are increasingly, in the post-war era, subject to non-state violence and abuse of their rights as citizens. This issue embraces a host of complex issues in the administration of justice: (i) engendering cooperation and coordination among public agencies which have rarely cooperated in the past, (ii) eliminating corruption and abuse of power by agents within those institutions, (iii) holding public officials accountable so that public confidence will grow in the institutions of governance, (iv) developing technical capacity in institutions, such as a new National Civilian Police, and supporting/protecting institutions sufficiently so that honesty can be expected, (v) generating a multi-faceted strategy for providing immediate and longer-term responses to crime which do not violate civil liberties but which reduce its incidence, and (vi) finding a way to articulate a reconstituted formal justice sector with customary dispute-resolution procedures of indigenous peoples (see Appendix 1).

b. Second is the issue of civil-military relations. The September 19, 1996 Peace Accord called for restricting the military to a function of defending national boundaries from foreign threats, and other purely military functions. All "civic action" functions were to be ceded by the military, although national necessity, as determined by a civilian president, could justify the "temporary involvement" of the military in other tasks. The same Peace Accord calls for the reorganization of the current security forces into a National Civil Police and the creation of a civilian intelligence service under the control of the President,⁴⁵ both of which would represent significant decreases in the military's traditional role. Also contemplated is the possibility of appointing a civilian Minister of Defense, which has never previously happened. The September 1996 Peace Accord calls for the military to be reduced in numbers by one third by 1997 (a target which some observers believe will be easily reached, given that force levels were far below authorized levels, once coercive military drafts were abolished in 1994) and the military budget is to contract by one third by 1999, with the accrued savings going to social spending on health and education. President Alvaro Arzú has moved energetically in 1996 to remove or to place on standby over 200 officers suspected of corruption or human rights violations. Additionally, the number of slots for generals has been downgraded from 23 to 10. The issue of whether cashiered or frustrated officers might be tempted to rebel in a coup is an issue warranting attention, but most observers in late 1996 did not see such a possibility as likely. On the other hand, the demand for "an end to impunity" from civil society clearly poses threats to a military establishment that has been the perpetrator of a vast number of human rights abuses in the era

from 1979 to 1993, and which continued to commit them late in 1995. Local communities throughout rural Guatemala contain ex-military commissioners and demobilized members of Civil Defense Patrols (PACs, in Spanish), whose continuing presence can easily occasion fear. Establishing civilian control over the military is crucial to abolishing the climate of fear that reigned between 1954 and 1995, and which has certainly not faded entirely in 1996. To implement the September 1996 Accord reigning in the military will take continuing political will by civilian leaders.

3. Creating a Climate for Democratic Participation.

To consolidate democracy in Guatemala, fear must be removed and a climate propitious to citizen participation must be generated. Indeed, a political culture of political efficacy (the belief that one can influence government institutions), political tolerance and trust in government institutions (or system support) must be developed.⁴⁶ But for that to happen, both citizens, office-holders and institutions must change. The interaction between citizens and institutions is central. Unless traditional patterns of interaction change, the opportunity for democratic consolidation could easily be lost.

a. Among the opportunities created by the accelerating political opening of the post-1986 era has been the explosion of groups in civil society, particularly the growth of non-governmental organizations (NGOs) of various types.⁴⁷ Both the Peace Accords, a "Washington Consensus" among international donors emphasizing state shrinking and "privatization of social policy," and a rethinking of political ideology on the left (reconceptualizing democracy in terms of local access and local organization to provide inputs to local government) has led to the emergence of a seeming consensus on the utility of NGOs as a vehicle for interaction with a state that is to be decentralized, after centuries of overcentralization. A reform of Guatemala's standards for attaining legal status (*personería jurídica*) in 1993 led to a dramatic acceleration of the rate of registration.⁴⁸ While the exact number is difficult to track, current totals could easily approach 2000. The Peace Accords emphasize the role of NGOs explicitly.⁴⁹ One of the most central themes is that of strengthening of municipal governments and of an enhanced role for NGOs representing indigenous peoples and women in interacting with local governments via agencies to be (re)created such as "municipal development councils."⁵⁰ While a healthy development, the challenge is in making certain that NGOs actually represent citizens⁵¹ and that the state (through municipalities, regional or national government agencies) actually provides substantive responses to organized citizen inputs from the NGOs.

b. The corollary issue to the NGOs is the probity, transparency, and responsiveness of state agencies. Even though the Peace Accords call for enhancing local government, state agencies at all levels must be reformed. Citizen confidence in Guatemalan institutions, while increasing between 1993 and 1995, remained quite low. On a 100 point scale, a national sample in 1995 rated institutions or outcomes poorly: human rights protection (32), Congress (39), Army (42), Ministerio Público - similar to the office of the Attorney General in the U.S. (46), Courts (48), Supreme Electoral Tribunal (51), Office of the Human Rights Ombudsman (54).⁵² The performance of President Alvaro Arzú in attacking corruption in the Army and Customs Bureau in 1996, a number of reforms to legal codes, and the depth of the changes envisioned by the Peace Accords provide the opportunity to transform the culture of governance in Guatemala. For example, recent decisions transferring ten percent of the national budget to municipalities, transferring a real estate tax to municipalities, and earmarking a 3% increase in the value-added sales tax (to a total of 10%) to regional and municipal authorities, will for the first time in Guatemalan history provide many municipalities with resources to spend.⁵³ But unless local government, like Congress, the courts and other agencies, provides "channels" of citizen access and increases the transparency of the process by which decisions are made, citizens will remain suspicious. In order to transform citizen attitudes toward the government, those who govern must transform their own attitudes toward citizens. A democratic culture begins with an elite that

believes in the rule of law and which is sufficiently adept and self-confident to hold itself accountable to a public trust. That elite culture has been in formation since 1986, with accelerations occurring in 1993 and 1996. But the depth of institutional reform needed is fully as profound as in Eastern Europe or the former Soviet Union. Virtually no governmental institution in the old Guatemala worked as it should have in a democratic polity.

II. POLITICAL ACTORS - THE PLAYERS

The players in the political process of Guatemala can be conceived at either the level of individuals or of social groupings/corporate entities. This analysis will focus on social groupings, as our capacity to foresee individuals who might be crucial political actors at the end of the period 1997-2001 is limited. Analytically more useful is to describe the social groupings whose interaction will determine which kinds of individuals may have appeal in a newly consolidated democratic environment. Nonetheless, three key personalities will be mentioned briefly prior to discussing social groupings.

A. Individuals of Political Moment in the Mid-1990s.

1. President Alvaro Arzú

Arzú emerged as a serious national leader from a term as Mayor of Guatemala City (1986-1990) which was perceived to be successful. Elected mayor as the candidate of one of the new *comités cívicos*, Arzú subsequently participated in the creation of a new party, the *Partido de Avanzada Nacional* (PAN), whose nomination he rode to the presidency in early 1996.⁵⁴ Moving with considerable force despite his slim electoral margin of only 2.5%, President Arzú has moved to establish control over the military and to clean up corruption in the Customs Agency. The latter activity, at least, has brought him considerable public approval - 94% of a sample of residents of the capital city approved in early October how the president had dealt with the customs corruption scandal.⁵⁵ While it remains quite unclear if such popularity would be sustained throughout a five year presidential term, the early start does raise the issue of whether, like Carlos Menem (Argentina) or Fernando Henrique Cardoso (Brazil), movements for a constitutional amendment permitting reelection might be initiated on his behalf.⁵⁶

2. Efraín Rios Montt

The "born-again" Protestant military dictator of 1982-1983 (after having once been the candidate for president of the Christian Democratic Party), Rios Montt is the most controversial political figure in Guatemala and the person around whom the *Frente Republicano Guatemalteco* (FRG) is organized. The FRG nominated another candidate, Alfonso Portillo, late in the 1995 presidential election, because the 1985 Constitution prohibits those who have governed in extra-constitutional fashion from being presidential candidates.⁵⁷ The FRG finished second in the presidential election, and elected 22 congresspersons.⁵⁸ The party, however, lacks a coherent political ideology, and is highly dependent on the continued affiliation of General Rios Montt, which is not absolutely certain. Rios Montt's appeal is partially based on the 20-30% of the Guatemalan population that is Protestant, as well as on some rural areas where the PACs provided opportunity for personal gain or a form of "security" for some indigenous peoples "caught between two fires."⁵⁹ In such rural areas and among some urban dwellers, he was viewed as "tough on crime." Rios Montt has populist appeal among the poor precisely because crime affects the poor and he purports to offer easy solutions to personal insecurity.

3. Rigoberta Menchú Tum

The indigenous leader who was awarded the 1992 Nobel Peace Prize for protesting state violence against indigenous peoples and the impunity of military human rights violators, as well as her activism on behalf of displaced peoples and democratization, Ms. Menchú is and will be a continuing political presence in Guatemala.⁶⁰ She has taken her Nobel Peace Prize monies as the basis for establishing a foundation, over which she presides, which exists to promote the interests of indigenous peoples and their role in a new Guatemala. Many analysts suspect that Menchú would like to offer her own candidacy for the presidency. Whether that be true or not, she is a very articulate voice for opening the political process to indigenous peoples, for accountability by public officials, and for a development model that will bring benefits to all Guatemalans.⁶¹ However, among elite Guatemalans she is discredited as being "far to the left" and her ethnicity is mocked,⁶² while, in fact, her autonomy from

former colleagues on the political left may have left her without a clear political base around which to organize.

Other figures may emerge out of the peace negotiations, from the cabinet or via other routes as "presidentiable" in the next few years. Rather than engage in speculation, let us simply indicate that the process of institution building in 1997-2001 will offer ample opportunities for personal career-building as well. Those who convey the sense that they can build institutions may well open up political space for their own careers, as, in three different senses, each of the aforementioned individuals has done.

B. Social Groupings - Corporate Entities.⁶³

1. Domestic Actors Important in Late 1996.

a. Civil Society Organizations.

Since the democratic opening in 1985, Guatemala has witnessed the revival of a variety of organizations within civil society. In the mid- to late-1980s, absent the existence of leftist political parties, many of these groups became the principal protagonists on the left in opposition to government social policies and human rights abuses. By 1990, organizations also became directly involved in the nascent peace process, known as the Oslo Process, by which different sectors (popular, labor, business, religious, political parties, etc.) met with the URNG to discuss the search for a political solution to the armed conflict.

Against this background, the Framework Agreement of January 1994 that initiated the current UN-moderated process called for the creation of a Civil Society Assembly (ASC) to discuss the substantive agenda of the peace talks, draw up consensus documents (which would not be binding) and transmit them to the government and the URNG. The ASC was constituted in May 1994 under the leadership of Msgr. Quezada Toruño, who was "conciliator" of the prior process from 1991-1993, and after six months of intense activity produced documents on each of the substantive issues, completing them far in advance of the actual negotiating process itself.⁶⁴

The groups that made up the ASC represent perhaps the most diverse collection of organizations yet seen within a single entity: political parties, religious, labor and popular, Mayan organizations, women, journalists, NGOs, research centers, human rights, and academics and other professionals. Notably absent, however, was the participation of the private sector, which had declined to join the ASC in part due to fears that its composition was tilted to the left. Indeed, many of the ASC's proposals were more extensive than those proposed by the URNG itself, and both civilian and military officials tried to delegitimize the positions taken by the ASC.⁶⁵

The future of the ASC is uncertain; although their original mandate calls for the ratification of the agreements reached between the URNG and the government, the ASC has elaborated various proposals for its continued existence in order to monitor, and even participate in the implementation, of the peace accords. The ASC's effectiveness in the past two years has been hindered by a lack of institutionality and the dispersion of interests of its members, as well as by three other events: Quezada Toruño's resignation (at the request of the Catholic Bishops' Conference) in early 1995, the departure of several ASC leaders into the electoral arena (as candidates for the FDNG), and, perhaps of less significance, the formation of a counter-umbrella group, FODICEP, by a few disgruntled sectors of the Assembly. FODICEP seems not to have made a major impact with its departure.

Among some of the more significant actors, active within--and apart from--the Civil Society Assembly, one would include Mayan groups, the popular movement, women's organizations, human

rights groups, and development-oriented NGOs.

The major Mayan umbrella organizations have, since 1994, formed the Coordination of Organizations of Mayan People of Guatemala (COPMAGUA), which represents the different Mayan sectors of the ASC, and which is charged by the Indigenous Accord with the responsibility of convening other organizations to participate the joint commissions to be set up.⁶⁶ Most groups fall within two tendencies: one which has its roots in the popular struggles of the 1970s and 1980s, and which tends to identify more clearly with leftist political organizations, and the other, sometimes known as the "culturalists", for their emphasis on Mayan cultural values and the importance of transforming the state to incorporate such values. The demands of both groups, however, are often perceived as radical by ladino elites. It has also been observed that national-level Mayan organizations tend to be over represented by urbanized K'iches from Quetzaltenango and semi-urbanized Kaqchikels from municipalities that border Guatemala City.⁶⁷ Although in broad terms these groups are representative, they still do not encompass organizational structures at a local level throughout the country. Many of the Mayan NGOs which work at a regional level in development assistance are affiliated with Council of Mayan Organizations of Guatemala (COMG). Other important national level Mayan entities include the Council for Mayan Education (CNEMG), which promotes bicultural, bilingual education, and the Guatemalan Indigenous Development Fund (FODIGUA), a relatively new, and still not completely incorporated, social investment fund that is run out of FONAPAZ, the fund for peace, a social investment fund designed to support the peace accords.

The so-called "popular movement" consists of those labor, peasant and rights-oriented groups (such as the Mutual Support Group or the widows' group CONAVIGUA) which have by and large carried the leftist banner during the past decade. Until the last few years, most of these groups would most clearly be found in the Unity of Popular and Labor Action (UASP), around which coalesced many of the more visible social protests of the past decade. Although relatively small in numerical terms, this group achieved high-profile representation in the Civil Society Assembly, and many went on to become candidates for the FDNG in the 1995 elections. Indeed, the FDNG--touted by some observers as the political arm of the URNG (see section II.B.1.b below)--is almost entirely populated by leaders and members of the popular movement. Within the short span of two or three years, the popular movement has moved from a more confrontational posture vis-a-vis the state and its institutions to one of engagement with, and participation in, its institutions at both the local and national level. Through its participation both in the ASC and in the electoral realm, the popular movement has gained important new political skills. But the tension between organizing around sectoral interests (such as labor or peasant demands), which appeal to the immediate interests of their base, and the larger political goal of building the party, has only been exacerbated by this abrupt leap into electoral politics.

Women have played key leadership roles in the emergence of civil society

organizations over the past decade (for example, Ninth Montenegro of the Mutual Support Group of relatives of the disappeared [or GAM, from its initials in Spanish], Rosalina Tuyuc of CONAVIGUA, [National Coordination of Guatemalan Widows] or Helen Mack); but only in recent years have organizations formed to promote a wide-ranging pursuit of equity for women. These groups, though largely ladina, urban and small in membership, have nevertheless managed to make their voice heard in public policy. One striking example of this was in the successful legal challenge in the Constitutional Court to the law on adultery (to be discussed below). Women's groups also succeeded in gaining representation in the Civil Society Assembly, where their efforts undoubtedly contributed to the inclusion of specific references to equality for women in the peace accords approved thus far. The participation of various groups in the Beijing Conference and the activities of the *Defensoría de la Mujer* of the Human Rights Ombudsman's office are other clear signs of a widening sphere of participation by, and for, women.

Human rights groups (defined here as organizations whose principal work is legal rather than political) are largely a product of the 1990s. Two of the most respected organizations, the Archbishop's Human Rights Office and the Myrna Mack Foundation, were only formed in 1990 and 1992, respectively. Unlike citizens' or victims' groups formed during the mid to late 1980s to engage in more public protests of human rights violations by the state (groups such as GAM, CERJ [Council of Ethnic Communities ARunujel Junam@] and CONAVIGUA), these groups have begun forcing reform of the legal system and security apparatus by more directly engaging state institutions, both through the patronage of key cases in the legal system and by proposing specific legal reforms. As a result, their work tends to be more widely accepted among the public at large and is perceived by most observers as not motivated by partisan politics. As the political moment moves rapidly from that of confrontation to engagement for victims' organizations, however, the latter are increasingly adapting with these same techniques, albeit with limited technical capacity.

No one really knows exactly how many non-governmental organizations (NGOs) exist in Guatemala, nor is there any agreement as to how to define them.⁶⁸ But whether they number in the hundreds or the thousands, NGOs--especially those involved in development activities--are emerging as increasingly important actors within the peace process. This is especially the case given the government's decentralization policies, in which health and education services are to be run by nongovernmental entities, especially in rural areas with little or no presence of the state. Given this situation, one might expect an enormous competition to be brewing for the contracting of state resources; however, the number of NGOs actually capable of properly managing resources remains extremely low. For some time, international governmental and nongovernmental agencies have complained privately about the fact that more funding exists for development projects than do the requisite number of organizations capable of implementing them. The NGO community, especially the smaller and more

left-leaning organizations, are well aware of their deficiencies and are currently engaged in seeking international assistance for help in improving their monitoring, evaluation and administrative efficiency.

b. The URNG

After more than thirty years of clandestine guerrilla activity, the most recent incarnation of the guerrilla movement, the URNG (comprised of four leftist factions that formally allied in 1982) has this year made numerous, and--to some--premature, inroads into the political life of the country. With the signing of the final peace accord, URNG commanders and their troops (said to number between 1,000-3,000) began the difficult transition from the highly regimented lifestyle of the gun-toting guerrilla to that of the ordinary citizen of the Guatemalan republic. If the demobilization and reintegration of rebel forces in other post-conflict situations are any example, the rebel rank-and-file can be expected to face significant challenges in reconstructing their personal lives as civilians.

While it remains to be seen what level of political support the URNG may enjoy, it appears that the FDNG's relatively successful showing in the 1995 legislative elections definitely encouraged the URNG leadership to reconsider the possibility of achieving reforms through electoral means rather than through negotiations. That factor, plus the indications of good will demonstrated by the Arzú administration (namely, the purging of corrupt and abusive military and civilian officials), apparently motivated the URNG leadership to forego making more dramatic demands at the negotiating table in favor of a more rapid finale to the peace accords.⁶⁹ By ending the process in late 1996, the URNG thus leaves itself almost three years to begin the slow, arduous process of rebuilding their political base throughout the country, with an eye toward the 1999 general elections.

The URNG implicitly (and in some rural areas, explicitly) supported the FDNG's electoral run in the last elections, raising questions about the future relationship between the two entities. The URNG has announced that it will not integrate into the FDNG upon its return, but this fact should not necessarily be interpreted as the foreshadowing of a split.⁷⁰ FDNG activists explain that there are basically two reasons for this logic: first, FDNG activists--who have long denied any links to the URNG, largely for security reasons--would be placed in the awkward position of now making the case for their accusers; and second, it would be difficult for the URNG *comandantes*--whose profile vis-a-vis the government is, by virtue of the fact that they negotiated the peace accords, much greater than the average FDNG congressperson--to subordinate themselves to a party leadership already in place. Inevitably, tensions will arise as the two groups compete for political leadership on the left; already, as the URNG begins to assemble its party structure inside the country, it appears to be siphoning off a good number of FDNG activists.⁷¹

c. Business groups

The dominant organization representing business interests in Guatemala is CACIF, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations, founded in 1957. Conventional wisdom has long held that there are essentially two tendencies within CACIF: the first, represented by the agribusiness, coffee growers and cattlemen's organizations, and which includes the majority of landowners, which is traditionally more anti-communist and inflexible in allowing for changing social structures and norms (for example, with respect to indigenous rights); and a second, linked to the producing, financial and commercial chains involved in non-traditional exports, and new

generations of entrepreneurs specializing in management techniques.⁷² As recently as 1990, one USAID document noted that CACIF was controlled by the agricultural elite, together with the urban industrial elite.⁷³

The private business sector has traditionally selected the Minister of Finance and long held effective veto power over economic policy, most often expressed in its ritual opposition to proposed increases in direct taxes. Even during the current period, when international support for peace process depends to some extent on the country's willingness to pay its share of the costs of peace, the private sector is opposed to any measures beyond improvements in the system of tax collection or an increase in the value-added tax (IVA, currently at 10%).⁷⁴ According to the Ministry of Finance statistics, Guatemala's tax-take as a percentage of GDP in 1995 was 7.8 percent, the lowest in Latin America after Haiti, and far below the Latin American average of 19 percent.

The dominant political position of the private sector, especially as represented by CACIF, has been maintained throughout the democratic transition that began in 1985. In a recent interview with former President Vinicio Cerezo in *Crónica*, he clarified an oft-repeated quote of his in which he claimed to have come into office with only "30 percent" of the overall political power in 1986. Cerezo claimed that his statement had been misinterpreted in the US media to imply that the remaining 70 percent belonged to the military, whereas, in fact, fifty percent of power was wielded by the private sector. And, as recently as two years ago, one analyst of the private sector (Gustavo Porras, who is now the head of the government peace commission and a close adviser to Arzú) concluded a brief critical commentary on the private sector by noting that "the country's governance is profoundly affected by the weakness of the State vis-a-vis the dominant economic interests."⁷⁵

CACIF has become more directly and publicly involved in the peace process and in issues of governance in recent years. The most notable instance was their important efforts at the time of the *autogolpe*, a move they roundly condemned and organized (in alliance with others) to reverse. Despite its refusal to participate in the Civil Society Assembly, CACIF also created a peace commission (its former president is now the Ambassador to the United States) to deal with issues in the peace talks, especially those related to the discussion of socio-economic issues. After the socio-economic accord was signed, CACIF treated it with both surprise and satisfaction, as it had expected the accord to be more inimical to business interests.

Unlike several of his predecessors (notably Presidents Cerezo and de León Carpio), who risked political instability by proposing tax hikes, President Arzú has yet to confront the private sector over the lingering issue of tax increases, despite the troubling circumstances of the state's finances.⁷⁶ Yet recent governmental analyses of projected revenues for the coming fiscal year are seen as entirely too optimistic.⁷⁷ Some international observers consider it just a matter of time before Arzú has to resort to measures that might jeopardize his otherwise substantial, and unprecedented, support from the private sector.

d. Religious institutions

The Catholic Church, often said to be the only institution other than the military with a truly national presence, has played a key role in human rights and the peace process in recent years. The Bishops' Conference is considered by some observers to be one of the most progressive in the hemisphere, second only to that of Brazil. Besides supporting the role of Bishop Quezada Toruño as the

Conciliator of the dialogue process during the Serrano government, and as convener of the Civil Society Assembly, the Bishops have produced several important pastoral documents on issues of land tenure, the indigenous question (in which they formally apologized for the Church's role during the colonial period), and the peace process. The Archbishop's Human Rights Office, as noted above, has evolved into one of the most respected nongovernmental human rights institutions, and its pronouncements often overshadow (both internationally and in the local media) even those of the current Human Rights Ombudsman. Another important project of most, but not all, dioceses is the "Recuperation of History Memory" (REMHI) project, which will provide a series of reports analyzing the violence suffered by the civilian population during the war, using some 300 local catechists and other church members to gather testimonies throughout the country.

Guatemala is distinguished by having the largest percentage of Protestants in all of Latin America, although again the politics of counting lead to politically motivated over- or underestimations. Suffice to suggest that between twenty and thirty percent of Guatemalans are *evangélicos* (as they are known in Central America). Both the political left and Catholic right are particularly concerned about the growth of Protestantism, the former because they fear that the *evangélicos* will be a tool of the U.S. fundamentalist right (and of the worst features of U.S. foreign policy) while the Catholic right fears for its hegemony and sees the "growth of the 'sects'" as evidence of U.S. cultural imperialism. Survey research indicates that Guatemalan Protestants differ little from Catholics in the attitudes they hold about society and even in their religious beliefs. Indeed, the most important thing to remember about religions is that like armies, foreign ministries or other large institutions, they are not monoliths. Frequent are the cases in which the beliefs of "the believers" are not what religious leaders would prefer.⁷⁸

e. Former Military Personnel

There is a consensus of opinion that the balance of forces among the ranks of active-duty and retired military officers is such that a *golpe de estado* no longer seems in the cards. However, cashiered military personnel--especially those tied to organized kidnapping and other criminal rings--can add a destabilizing element to the political equation. Indeed, most speculation about the increase in kidnappings following Arzú's assumption of office, and subsequent to his initial purge of police and military officers, point in this direction. It remains to be seen whether the most recent cleanup (September 1996) will have the same effect, especially if judicial prosecutions against those accused fail to move forward.

On a related theme, there are reasons for optimism that Guatemala will not suffer the same kind of political trauma generated by demobilized rank-and-file military (and, to a lesser extent, rebel) personnel in El Salvador. In El Salvador the military ranks were thinned quickly and benefits were only sparingly handed out following the signing of the peace accord, while in Guatemala this problem is less of an issue. By some estimates, the Guatemalan military has already fulfilled its commitments to downsize its forces by a third by the end of 1997. The ranks of the military have gradually thinned over the past couple of years, since then President Ramiro de León Carpio abolished the practice of forced military recruitment. That still leaves a top-heavy officer corps, but a buy-out plan is in the works to provide for the voluntary retirement of many officers (which will affect the military's ability to meet its 1999 requirement to reduce spending by 50 percent).

One remaining issue could ignite the passions of current and former military officers, if not resolved to their liking--that of accountability for past human rights abuses. Although the military has accorded itself an amnesty at various points in the last decade, and have equally offered it to the insurgents, the Comprehensive Human Rights Accord indirectly commits the government (or, at least, the executive branch) not to promote any kind of amnesty. For its part, the URNG also rejects the idea of an amnesty, since they maintain they were simply exercising their legitimate right to rebellion against an illegitimate regime. More importantly, a broad range of groups in civil society have formed an Alliance Against Impunity, and have proposed only dismissing the political crimes of the insurgents

(treason, sedition, etc.), but leaving any gross violations of human rights committed by insurgents or the military open to prosecution. While there are obvious legal and moral justifications for this position, it will be an interesting test case of whether or not the traditional posture of the human rights community actually leads to greater justice and reconciliation, or whether the Guatemalan political and legal system simply buckles under the duress of the many cases which are likely to be pushed forward in the absence of an amnesty.

2. International Actors with a Domestic Political Presence.

a. MINUGUA

The United Nations Human Rights Verification Mission in Guatemala (MINUGUA) was established in November 1994 with the mandate to verify the human rights commitments of the parties under the Comprehensive Human Rights Agreement signed in March 1994. Its very presence was seen as a huge concession by the Guatemalan military (whose nationalism, it is said, rivals only that of Cuba in this hemisphere), but was left with no real possibility of rejecting it. The Mission, with experienced personnel from other human rights missions in Haiti and El Salvador, quickly mounted some 13 regional offices and subregional offices, whose principal task has been to verify human rights complaints. Like other missions, the UN presence has principally had a dissuasive effect on human rights abuses, and popular, indigenous and peasant groups are perhaps the sectors most enthusiastic about its work, which they feel provides them with a unique, albeit temporary, form of protection. Many FDNG activists have noted that their participation in last year's electoral process, and the relative lack of political violence associated with that process, is attributable in great part to the watchdog role played by MINUGUA.

An important novelty in the design of MINUGUA is that, at the same time it is verifying the behavior of state institutions charged with the protection of human rights (principally the police and judiciary), it is also mandated to fund programs for the institutional strengthening of those programs. MINUGUA personnel have found that these activities, while still small and underfunded, nevertheless reinforce the work of persons in favor of reforming state institutions from within. In turn, MINUGUA's ability to peek inside the institutions has also contributed with a more nuanced diagnostic of the problems Guatemala confronts than they would have gotten solely from their verification mandate.

In theory, MINUGUA could expand somewhat following the signing of the final peace accord to verify all of the substantive and operative agreements. MINUGUA (or another UN agency, see below) will be involved in the demobilization process, and is also likely to continue its work with the Indigenous Accord (of which only the human rights sections have taken effect as yet) and probably will verify the accord related to the military and civil society signed in September. However, the government has made it clear that it does not favor a giant, overarching mission like ONUSAL was in El Salvador, which had the final, decisive word on compliance with the peace accords. Thus, some of the verification--which the accords largely only stipulate that they be verified by the United Nations--for the other accords may be farmed out to other UN agencies such as UNDP (Socio-Economic Accord) and UNHCR (Refugee and Displaced Persons Accord). For the Arzú government, MINUGUA's continued presence in the country signifies an unwanted dependence on outside support, and sends an implicit message to the international community that all is still not well with the

Guatemalan human rights situation. MINUGUA can thus expect to be around through 1997, but only in a very reduced and redefined form would it likely maintain a presence for much longer than that.

3. Actors Once Important or Potentially Important.

a. Labor

Labor unions are especially weak in Guatemala, currently representing only about 3% of the work force and having been on the front line of repression suffered in the late 1970s and early 1980s. Since that period, when there was a marked radicalization of many labor and popular organizations in favor of the revolutionary struggle, the labor movement has yet to recover. There are three major labor federations (of Christian Democratic, social democratic and left/popular inclinations), but there are few signs of growth in any of them.⁷⁹ Another difficulty for labor resides in the fact that they are most strongly organized in the public sector, which--under the current economic plans of the Arzú government--are targeted for layoffs and privatization. Moreover, the government has taken a relatively tough line against public-sector strikes by passing an anti-strike law for public sector employees deemed "essential" by the state, defined very broadly in the law. This raises the specter of occasional labor unrest, such as occurred in June when unionists took over the Congress in protest of this law; in a stunning reminder of the lingering dependence of civilians on military force, the army was called in to clear the demonstration. In many other cases, President Arzú and his cabinet have been able to avoid costly strikes through negotiations, but this situation is not likely to hold for very long.

b. Rural Indigenous Poor and Rural Women

Few data are available as to trends in the level of organization of the rural indigenous poor, including women, but their socio-economic conditions are widely seen as an impediment to national development, not to speak of participation in the development of their own communities. In the draft country document of the Inter-American Development Bank, for example, the "exclusion of an important segment of the indigenous and rural population from the development process" is cited first under the heading of the "principal obstacles to socio-economic development" in Guatemala.⁸⁰ The proliferation of betterment committees in *aldeas* throughout Guatemala involves many from this category, and in different communities they may also be the subject of organizing by various political parties or popular groups. Nevertheless, the statistics regarding their socio-economic status speak eloquently about the tremendous obstacles faced by this stratum of society.

Among Central American countries, Guatemala has the lowest rate of life expectancy and the highest illiteracy rate. As previously noted, in 1990 an estimated 75% of the national population was poor, with the incidence of poverty and extreme poverty even higher in rural areas among the indigenous population.⁸¹ Disparities in education can be noted by comparing the average schooling of indigenous persons in the work force (1.3 years) with that of non-indigenous persons (4.2 years). In rural areas, 47% of women are illiterate as compared with 34% of rural men. Rural women also carry the larger load of unremunerated family work, with 35.6% of women's time being in this category, as compared with 24.3% of men's time.⁸² Clearly, there are inequalities which, if perceived as "grievances" could become the basis for socio-political organization. And the Peace Accords note these conditions (in Section I.B. of the Socio-Economic Accord and in Section II.B. of the Indigenous Peoples Accord).

c. The Urban Informal Sector

One third of the labor force of Guatemala City consists of the non-professional self-employed or those employed in "enterprises" of five or fewer. A good percentage of such people are Mayans in the city.⁸³ The examples of taxi drivers and seamstresses in other Central American countries suggest that urban cooperatives can sometimes be formed in activities that would be otherwise informal, providing immediate economic benefits (via collective purchases of inputs, or collective marketing of products and services) and at the same time providing a vehicle for inputs into the political system.

III. KEY INSTITUTIONS OR ARENAS OF INTERACTION

A. Executive Branch

The Guatemalan presidency has undergone a number of important changes since the failed *autogolpe* of President Serrano Elias in May 1993. The president has long been the epicenter of a very centralized governmental bureaucracy, with often the most minor of governmental decisions taken by the president himself or only with his consent. In a way, the Serrano self-coup attempt was the natural culmination of a presidential system that fosters the "arrogance of power" of its maximum authority.

One of the characteristics of the presidency which appears to have evolved rapidly under the Arzú government has been his ability to break with the tradition of relying on military advisers, and the *Estado Mayor Presidencial* (EMP) in particular, for ongoing counsel on matters of state. Former President Ramiro de León Carpio made some initial attempts in that area, but in the end appeared to be as beholden to the military as anyone. Indeed, shortly after leaving office he commented that one of the things he missed most about the presidency was the attention and care he received by the EMP. Whereas de León Carpio placed a strategically important military ally in charge of the EMP (Col. Otto Pérez Molina), Arzú downgraded the position to the point where its EMP is hardly even known outside the Presidential Palace.

Another challenge for Arzú will be to replace the kind of strategic intelligence and advisory services which the EMP once provided. The accords recently signed deal with this issue, allowing for the creation of a civilian strategic advisor. To some extent, former UNDP advisor Ricardo Stein (an analyst widely respected in the international community) was brought in to fulfill that role. Combined with Foreign Minister Eduardo Stein (cousin of Ricardo with a long involvement with international organizations) and COPAZ president Gustavo Porras (a former guerrilla ideologue and childhood friend), Arzú enjoys perhaps one of the most politically savvy and distinguished group of advisers of any president in recent memory.

As noted elsewhere in this report, Arzú has also undertaken an unprecedented (and hitherto almost unimaginable) campaign to weed out corruption within the state bureaucracy. While the ulterior motive behind first attacking the Customs Agency may wind up being economic (customs revenues quadrupled within a week in some ports), it nevertheless represents an important step toward creating a climate of accountability, and may eventually lead to restoring some degree of citizen confidence in the otherwise poorly appreciated state apparatus.

This move was also taken while enjoying unprecedented support from the private sector, without whose support he could not have taken such an action. But Arzú is also well situated politically in other respects: the spotlight of the international community is upon Guatemala more than perhaps at any other time in recent memory; the peace process is coming to end, and the military has understood that they must do their own housecleaning before someone else does it for them (as was the case in El Salvador); and he is clearly riding the wave of favorable public sentiment by attacking one of the root causes of criminality in the country. The peace process has given Arzú breathing space and probably a slight economic cushion for 1996; the challenges in the years ahead may not be met with the same set of advantageous circumstances.

Arzú and the PAN have a clear agenda for Guatemala, to a great extent laid out in the peace accords themselves. Among the key institutional challenges required to achieve success on his own terms are the decentralization and modernization of the state apparatus. Of necessity this will mean confronting head-on the corrupt and inefficient machinery of the state to a greater degree than has thus far been seen. Sustained political leadership will be necessary to implement reform of an entrenched "civil service" some portions of whom will resist making public agencies transparent and responsive to citizens.

B. Congress

Guatemala's legislature has been historically very weak and dominated by the executive branch. The Constitution allows for the Legislature, the President, the Supreme Court and the University of San Carlos, the national public university, to initiate bills in Congress. The number of laws presented in the past by legislators has been low, and remains under 30%. An experienced legislator recently lamented that "We have two ways of drafting laws: either we copy them from other countries or special interests provide text."⁸⁴ As of late 1996, Guatemala's eighty congresspersons had no staff of their own and made virtually no efforts at constituency service. There was little connection to districts that one "represents."

The Congress is organized into Committees which are typically "staffed" with one clerical worker and one professional staff.⁸⁵ Staff are usually untrained in drafting laws and the procedures for moving laws through Congress. Most Congressional hearings are not open to the public and there is no port of entry for collective citizen input. Until recently, there has been resistance to transparency, perhaps based on a lack of knowledge of or self-confidence in the Congress' own procedures and responsibilities. National political parties represented in Congress do not typically serve a role of aggregating citizen interests. The historical weakness of the institution and the lack of expertise in the Congress inhibit its ability to act independently.

During the early 1990s Congress was plagued by scandals involving Congress members and a steady deterioration of the institution's ability to function. President Jorge Serrano used such corruption as a justification for the May 1993 *autogolpe*, which was repulsed. President Jorge de León Carpio, who succeeded Serrano, also launched a campaign to purge the corrupt Congress. The people responded and showed their disgust by casting a vote of "no confidence" in the Congress through a national referendum. A compromise was reached and extraordinary elections were held to fill out the remaining term of the discredited Congress, the number of Congressional members was reduced from 116 to 80 and subsequent terms of office were cut from five to four years, with one reelection permitted. A newly reconstituted Congress was seated in October of 1994 to finish out 1994-1995. During that abbreviated term Congress was either unwilling or unable to pass legislation needed for a broader reform effort.

The Congress currently serving looks substantially different from Congresses of the recent past. The Congressional elections held in November 1995 were contested by candidates from 23 political parties covering the political spectrum. The results were significant because a new reform-minded party, the *Partido de Avanzada Nacional* (PAN), won control of the Congress and for the first time since 1951 a leftist party (the

Frente Democrática Nueva Guatemala or FDNG) won representation with six seats. The PAN holds an absolute majority in Congress with 42 seats, followed by a personalist party, the *Frente Republicano Guatemalteco* (FRG), which won 22 seats. If the PAN can avoid schism, its majority should enable its legislative program to pass, although constitutional reforms will require assembling additional votes for an extraordinary majority. Twelve women and eight indigenous Guatemalans were among the newly elected. The inclusion of the legitimate left along with substantial showing of women and indigenous leaders makes this Congress unique in the past four decades. That uniqueness is reflected in a substantial commitment across the political spectrum to work on a non-partisan basis to rebuild the Congress as a model democratic institution.

Although the new composition of the Congress and the political will of the President of the Congress toward reform is encouraging, building a model democratic institution will be a challenge. A major problem is accountability to constituents. Although there is a single congressional body, its members are elected in two distinct ways. Guatemala's unicameral Congress with 80 deputies is based on no single clear theory of representation. Sixty-four members are elected by district and sixteen members are elected by proportional representation from national political party lists. Those elected from districts might be taken to illustrate a U.S.-style "geographic constituency-based theory of accountability." But in Guatemala there is no requirement for or tradition that representatives need to reside in the districts they represent.⁸⁶ So the degree of connection to the district is minimal. European parties achieve a different kind of accountability that is programmatic, based on having disciplined political parties. Such a theory implicitly underpins the election of sixteen *congresistas* via proportional representation. It is too soon to tell if the sixteen members elected proportionally from the party list and the remaining "district representatives" can forge programmatically disciplined parties. There is certainly nothing undemocratic about "programmatic accountability," and the current situation where one party has a majority is conducive to attaining it. But other elections may yield other outcomes, and the balance of seats ("district" vs. "list") implies the prevalence of a "constituency-based" model of representation in constitutional design. If so, the current absence of mechanisms for constituency service and representation is troublesome.

Leadership turnover is also a troublesome issue. The current arrangements provide for rotation in the presidency of the Congress and in committee leadership every year. Worse yet, staffs associated with congressional commissions (committees in U.S. terminology) change yearly with the rotation of leadership. Currently, organizational practices are almost guaranteed to undermine institutional memory.⁸⁷ The only mechanisms that might work toward continuity are (i) party discipline, and (ii) staff support, which, while currently weak, is being developed by a Congressional modernization project supported by USAID (and perhaps soon by the IDB).

A final challenge to the Congress is that the public expectation and demand for legislation may well exceed its current capacity to respond. There is an enormous backlog of legislation left by previous Congresses, who were either unable or unwilling to act. This demonstrated incapacity, and a sense that Congresspersons have traditionally enjoyed impunity for acts of corruption, probably contributes to the low degree of confidence that the public accords to the body.⁸⁸ Events in 1996 may have begun to turn that image around.⁸⁹ But the number of laws anticipated and the complexity of legislation required as a result of the Peace Accords can not be underestimated. A recent count was that 71 new laws and 19 constitutional reforms were generated by the first six peace accords.⁹⁰ Public expectations are running high (perhaps for the first time in decades) and much rides on Congressional performance. Implementing the Peace Accords via legislation is a key to democratic consolidation in Guatemala and therefore is also a key to stability and economic prosperity. Internal procedures within the Congress are antiquated and are in need of reform if the burden of the Peace Accords is to be attended. The pressure on this Congress to perform is unprecedented. The fact that most of the Congress members are first-time members will make living up to expectations all the more difficult, as will the lack of in-house expertise, antiquated procedures and inadequate resources. Among the resources on which Congress can count are a leadership in 1996 that is committed to professionalization of staffing procedures and the CEDEL program (see below).

C. Judicial System

The prospects for significant reform of the Guatemalan justice system have probably never been better. The impetus of the Peace Accords, a reformist administration in power, and a succession of favorable events within the justice system itself make change possible.

Within the past four years the criminal procedure code was thoroughly modernized, and the prosecutor and public defender functions are being vastly expanded and professionalized to meet their changed roles thereunder. Although not yet as radically transformed, the credibility of the judicial branch has been improved by a complete changeover at the Supreme Court, and the new leadership seems more open to further reform.

These reforms are yet incomplete, and others are required throughout the system to meet the current challenges. The pre-reform system had proven incapable of effectively investigating and prosecuting human rights abuses. Now, while human rights abuses remain of major concern, the system must deal with a mounting wave of common crime. The Peace Accords emphasize the additional challenge of improving service to the heretofore marginalized indigenous half of the population.

1. Three Challenges

The most prominent justice system challenge of the past decade, to investigate, prosecute and punish *human rights abuses* effectively, may be abated but is still present. The vulnerability of the system to manipulation through bribery or intimidation by powerful people in the military, the government, or the private sector, has been reduced but not yet eliminated. The technical competence of the prosecutors and police in criminal investigation has been strengthened, but still leaves much room

for improvement.

Meanwhile the level of *common crime* has risen to where public concern for security of person and property, in the home, at the work place, and in the community, could provide support for antidemocratic measures, even return to military rule. The flaws which have impaired the capacity of the justice system to deal with human rights abuses, particularly a weakness in criminal investigation, have similarly affected the capacity to deal with common crime.

The failures of the justice system in serving *the needs of the indigenous population* have been brought to the fore by the Peace Accord negotiations. The Accords call for providing cultural and linguistic competence to assure that the rights of *indígenas* are accorded the same respect and protection as those of ladinos. A further challenge is to determine how the norms of the ladino legal system should relate to the traditional norms of the indigenous communities within an overarching justice system that would serve the needs of all citizens.

2. The Governmental Response

With the return of elected government to Guatemala in the mid-1980s, reform became possible in the justice system. While the system's reputation and performance were clouded by rampant corruption, incompetence and inefficiency, court leadership had passed to a distinguished academic jurist who was interested in reform. The system opened up to foreign assistance from *Instituto Latino Americano de Naciones Unidas Para la Prevencion del Delito y Tratamiento del Delincuente* (ILANUD) in diagnosing operational problems, instituting the training needed to address them, and the keeping of statistics. Assistance was accepted from Harvard Law School to improve criminal investigation and prosecution through the training of judges and prosecutors, and to analyze the problems of corruption and interface with the indigenous communities. A direct bilateral program was initiated with USAID to address weaknesses in court administration, especially management information systems and caseload management, but the agreement also included a broader mandate for producing analytical studies of institutions and procedures and for judicial training.

Guatemalan court leadership proved more interested in criminal procedure legal reform than in broader systemic reform. Indeed the Court President's disdain for court administration and reform thereof led to termination of the USAID project; and Harvard Law School left early because of institutional dissatisfaction with weak performance by the Government of Guatemala in prosecuting human rights cases.

Significant reform of the criminal procedure code was enacted in 1992 and became effective in 1994. These measures opened up the system through oral proceedings to much increased transparency and accountability. Further, they enabled the system to enhance competence through increased specialization. The judge's role became one of presiding over the trial and applying the law. The responsibility for directing investigation was assigned to the hitherto underemployed *fiscales* or prosecutors. Previously, judges had handled investigatory functions.⁹¹

Faced with much increased responsibilities and the need for rapid organizational growth, the *Fiscalia*, previously the weakest institution in the system, turned desperately to USAID for assistance. USAID was able to respond with training (including training for judges as well as prosecutors) and with support for pilot activities in selected *centros de enfoque*. The purpose of the *centros* has been to develop working models for justice centers that bring the investigation, prosecution and judicial functions into the close working relationships necessary for effective and efficient dispensing of justice. Pilot *centros de enfoque* have been located in the department of

Quetzaltenango and have been well-received by participants.

Meanwhile in response to court scandals, the court system was shaken up, with a complete replacement of the Supreme Court occurring in response to the referendum on *depuraciones* in 1994. This has enhanced the Court's reputation as to incorruptibility, but has also caused a period of micromanagement and even worsening efficiency. Ricardo Umaña, appointed President of the Supreme Court and Judicial Branch in late 1996, seems open to assistance in addressing the courts' problems. Modernizing court administration has been incorporated into pilot activities of current USAID technical assistance projects.

Equally as important as prosecutors to criminal investigation are the police. The reputation of the police for incompetence and corruption had been no better than that of the other agencies of the criminal justice system. Since the mid-1980s the National Police have been open to assistance in professionalizing their ranks and improving their skills in criminal investigation. Pursuant to U.S. legislative mandate, ICITAP has been the agency to respond to that need, and has provided substantial support for the Police Academy in both training and equipment. The September 1996 Peace Accord calls for reorganization and centralization of police functions in civilian agencies, such as the National Police.

In the late 1980s, the courts collaborated with Harvard Law School on some pilot activities in Totonicapán, an area of predominantly indigenous peoples. These included training and other support for *alguaciles*, selected by indigenous communities to serve as intermediaries between the communities and the formal court system. While this activity seems to have abated with the departure of Harvard, recently MINUGUA and CREA/USAID are supporting the training of interpreters (Spanish/indigenous languages) to respond to the Peace Accord requirement for providing such services without charge in all courts.

3. Current Situation

The new criminal procedure code is a major reform which is yet to be substantially implemented. Full implementation will require massive improvement in and expansion of physical and organizational infrastructure, probably implying financial costs far beyond the comprehension of those who supported and enacted it. Of necessity, implementation will be imperfect and incremental over a period of many years, which does not mean that it should not be pursued and supported. For international donors, beyond the important benefits that the new code will provide within Guatemala, this reform provides an opportunity to support a worthy model for what could be accomplished in other similarly situated countries.

While Guatemalan efforts supported by the USAID-financed training and technical assistance are starting to show significant impact on the performance of the prosecutors, particularly in the demonstration *centros de enfoque*, the *Fiscalía* is still woefully short of providing adequate coverage even to the ladino portion of the country. Extending and sustaining throughout the country the coverage and competence developed in the pilot activities will depend heavily on development of a Guatemalan training capacity.

The police are still essential partners with prosecutors in criminal investigations, which remain the most critical element in the justice system for dealing both with common crime and human rights abuses. The military's retreat from overt political power helps to relieve one factor which has encumbered investigation of human rights abuses, and of common crimes in which the military, as an institution or as individuals, have been suspected of complicity. But excessive interpretive weight may have been attributed to "conspiracy" and not enough to incompetence. The police are still woefully lacking in the skills required to be good criminal investigators.

The legal requirements of the new criminal procedure code, combined with the strengthening of the prosecution function, have accentuated the weakness of the public defender function. Heretofore dependent on the varying abilities and motivation of law students in meagerly supervised *bufetes populares*, the new codes requires that this function be professionalized. An incipient public defender organization started within the court system will likely soon be a separate agency similar to the *Fiscalia*⁹². It must expand substantially to meet the needs for representation; and, for fairness of representation, its staff should be as well qualified as are the prosecutors. Experience elsewhere indicates that lectures and classroom training are far from sufficient. To develop appropriately high standards of performance and an organizational capacity to sustain such performance, on the job counseling by proficient lawyer/trainers is required.

While the perception of corruption in the courts has been improved by the 1994 housecleaning, the court system has still to address its major problem of inefficiency in management and administration. Guatemalan judges tend to be micromanagers who haven't yet learned to concentrate their efforts on judicial decision-making and to use professional administrators for nonjudicial tasks. Antiquated court procedures are overwhelmed by modern caseloads. An incipient computerized management information system, established with the assistance of USAID through ILANUD and Checchi Associates, has deteriorated from lack of use and support. Financial management and procurement systems are inefficient and unacceptably wasteful of scarce resources.

Unlike many bar associations in the United States, the Guatemalan Bar Association (*Colegio de Abogados*) has not been known as a mover and shaker in legal reform. Even if it were, its effectiveness would have been hampered by annual changes in leadership. Recently, however, it extended the term of presidents to two years and has become an increasingly articulate voice in asserting the interests of its members.

Not surprisingly, in view of the burden of change upon criminal law practitioners who were accustomed to the old code, the Bar Association publicly opposed recent radical changes in the criminal procedure code. Once the new code was enacted, however, the Association readily collaborated with USAID to develop and present continuing legal education programs on how to practice under the new code. Further,

in support of the Peace Accords, the Association, with Canadian financial support, is undertaking a public campaign concerning the implications of the Accords for citizens of a multicultural, multiethnic society with a multilingual justice system.

The law schools also opposed the new code because it threatened to deprive them of indigent criminal defendants as clients for their student practitioners. Unlike the Bar Association, the law schools have been slow to adapt to the new code. Despite proffered assistance from USAID, the University of San Carlos Law School has not yet changed its curriculum to conform to the Code; and, unfortunately, the other three smaller, private law schools are required to conform to the national university's law school in their curriculum and courses.

The Guatemalan business community has also been slow to perceive an interest in legal reform. In various countries of Latin America, such as Colombia, USAID has been able to influence business community thinking on development issues through support for private sector "think tanks." The research of such institutions can perform a catalytic role by providing essential data and analysis for recognizing problems and justifying reforms. While the Guatemalan business community has not shown interest in such activities in the past, the magnitude of recent changes in socio-political atmosphere suggests that attitudes might be changing in the business community as well.

For a portion of the indigenous community, the courts and its agents are still foreign institutions staffed by foreigners speaking a foreign tongue. More interpreters will help in bridging the gap; but for a crime victim, or especially for a defendant, an interpreter is no substitute for representation and counsel by a lawyer who speaks one's language and understands one's culture. Similarly important would be linguistic skills and cultural understanding on the part of the judge.

This is a time for thoughtful, well informed consideration of the extent to which, and the manner in which, Western legal traditions should override indigenous institutions and customs for dealing with conduct considered criminal. Adding to the complexity of this issue is the increasing number of communities which are neither indigenous nor ladino but a strong mixture of both. Appendix 1 presents an overview of customary law in Guatemala.

D. The Army and Civil-Military Relations

The signing of the September 1996 Peace Accord and the presidency of Alvaro Arzú have contributed measurably toward the establishment of civilian control over the military in Guatemala. Yet as scholarship on democratic consolidation has reminded us, the "failure to challenge non-democratic enclaves is not equal to democracy" and one of the challenges which must be addressed over time if democracy is to be consolidated is that of "reserved domains of policy-making" which are initially (in the democratic transition) "removed from the purview of elected officials."⁹³ In most democratic transitions it is highly likely that national security issues will be claimed by the military as precisely such a "reserved

area." Indeed, the Sept. 1996 Guatemalan accord, while seeking to restrict the military to "defending the sovereignty of the country and the integrity of its territory... and other tasks of (temporary) cooperation (items C.35 and D.45)," cannot remove the claim of the military to "special expertise" in the matters to which it is restricted. Consequently, the military can be expected to assert that "these matters should be left to us." Although the advocates of democratization would prefer immediacy, it may be some time before civilian specialists on military affairs are sufficiently numerous, widely distributed and well-placed in civilian government agencies that fully effective civilian control of the military can eliminate a "reserved domain" in national security affairs.

Indeed, the establishment of "a climate of civil-military relations conducive to democratic consolidation" will be a task for the next decade or two.⁹⁴ An ideal outcome would be a situation in which a clearly defined role exists for the military over which there is mutual agreement with civilian political elites and the citizenry, and mutual respect exists between civilian and military elites. To move Guatemala from the tragic history of the era 1954 - 1996 toward such a condition is a process that will take time.

This history of the military in Guatemala in this era is complex, but central elements include (i) its role in the 1954 coup and consequent involvement with U.S. government agencies also implicated, (ii) direct rule by military officers through most of the era, 1954-1986, and (iii) extensive implication in human rights violations during the 1980s, through the use of military commissioners, "voluntary" civilian defense patrols, and indiscriminate violence against whole villages, in a civil war against the guerrilla movements that eventually united in the URNG.⁹⁵

The human rights violations date most dramatically to the era of the early 1980s.⁹⁶ At that point in time the Guatemalan military discovered that the URNG (or antecedent organizations) were in control of much of the countryside, and launched a counteroffensive to drive back the guerrillas. They devised a number of mechanisms to "consolidate control" of areas retaken from the guerrillas: military commissioners (civilians appointed by regional military commanders) and the drafting of "voluntary" defense patrols (e.g., the PACs) to hold the guerrillas at bay were among those which led most systematically to human rights violations, but massacres of whole villages also occurred.⁹⁷ The PACs may have mobilized 800,000 Guatemalans who were potentially under arms.⁹⁸ Beyond creating a polarized climate in which human rights violations could occur with impunity for the perpetrators on both sides, the civil war left a legacy of militarized authority in substantial areas of contested terrain.⁹⁹ In these areas, for many years there was no governance other than military.

But from the mid-1980s, the effort by Central Americans to take charge of their own destiny (initially given structure in the 1986 Esquipulas II accords) has yielded a remarkable set of transitional events in Guatemala. While the democratic transition phase has taken longer in Guatemala than elsewhere in the region, the following things have happened during the presidencies of de León Carpio and Arzú.¹⁰⁰

* Military commissioners were abolished in September 1995. Up to 30,000 such commissioners existed at the height of the civil war. The Peace Accords gained their abolition; President de León Carpio was sufficiently strong, and the military leadership sufficiently committed to the peace process, to implement this initial step.¹⁰¹

* President Arzú, twice in the first year of his presidency (1996), fired, forcibly retired or placed on "standby assignment" large numbers of senior military officers whose performance appeared not to accord with constitutional standards. He not only survived doing so, but appeared to gain in public stature for having done so.

* The Peace Accords called for the demobilization and disarming of the PACs within 30 days of the signing of the definitive Peace Accord, but that process was already well under way in the summer of 1996. From 200,000 PAC members in June 1996, the estimated total remaining active was 60,000 by the end of October, looking toward demobilization by the end of 1996.

* The Sept. 19, 1996, Peace Accord called for a reengineering of the police into a National Civilian Police by 1999, and removal of the military from policing functions.

* The same Accord called for a downsizing of military force levels (within one year) and military budgets (within three years) by one third.

When summarized, the evidence of movement from a wholly militarized polity to a proto-democratic state between 1986 and 1996 has been considerable and impressive. Still, the consolidation of democracy requires the establishment of clear civilian supremacy, the removal of all "reserved domains" of policy-making privilege, the establishment of a state of law, and a "satisficing"¹⁰² solution on the problem of impunity previously enjoyed by perpetrators of human rights violations.

What remains to be done? The process of creating a political system in which elected civilian government controls the use of state force has just begun. There are boulders in the path. Among them, first and foremost, is an historical legacy of abuse by the military towards Guatemalan citizens. While the Peace Accords are trying to create a new framework for civilian-military relationships, the legacy of abuse reaches deeply into Guatemalan society and culture. The military are accustomed to impunity. Even with highly publicized imprisonments and forced retirement of key military figures, the day-to-day abuses of power, in remote areas and in the anonymity of cities, will not soon die out. Military people socialized in their roles as special citizens with the right to abuse civilians will probably remain a majority of the corps for some time to come.

And, on the other side, is a civilian population used to this abuse. For generations civilians have been beaten down and unable to control the military at the point of abuse. It is not realistic that the fear of retaliation will disappear quickly and that citizens will pick up the mantle of control woven for them by the Peace Accords

without a qualm. They will wait and see, and may be forgiven if they wait even longer than might seem to the donor community strictly necessary. This inbred fear and caution, as well as the military's own remaining sense of its impunity, will affect the success of any new institutions created to ensure that civilians control the military. For example, one odd reaction to the proposal of quickly retiring most members of the military and police was reluctance-- on the grounds that at least "if you keep them in the military, at least you know where they are."

Added to this is the clear and present danger of assaults, kidnappings, rapes, and other vicious crimes that Guatemalans identify as the single largest concern they have about politics. Given the history of crimes committed with impunity by military and police, often citizens today seem unsure whether the perpetrators of the crimes are active or retired military or police, ex-combatants of one group or another, or entirely new criminal groups. They know they do want crime ended, however. One "solution" is to work entirely outside the government. Citizens have beaten and lynched people caught in criminal acts, at times even wrestling them out of the hands of local police.¹⁰³ As in El Salvador, the temptation to call the military back into the policing business may be strong.

Given the magnitude of such challenges, it is clear that in Guatemala a number of problems remain in the area of civil-military relations. Among a non-exhaustive list of such problems, we would include:

- * The need to deepen civilian expertise so that effective oversight of the military can be performed by civilians. This would imply the development of sufficient expertise such that congressional and executive oversight could occur. Eventually one would wish to attain a situation in which effective reviews of military budgets in the Congress (as called for in the Peace Accords) could occur,¹⁰⁴ civilian ministers of defense could be appointed (again, authorized in the Peace Accords), and the pool of civilian expertise in military affairs would be sufficiently deep that the existence of civilian control would not be dependent on a few individuals.
- * The need to find a solution on the issue of impunity for human rights violators in the military which is symbolically acceptable to civil society but not so thorough as to provoke a military rebellion which cannot be contained.¹⁰⁵
- * The need to create/consolidate a Presidential security staff that is genuinely at the service of civilian presidents, rather than being an element which constrains them.¹⁰⁶
- * The need to develop a civilian intelligence system, or at least civilian control of intelligence processes, so that they are not distorted into mechanisms of political control of participatory activity that should be entirely permissible in a

democratic society. This is called for in the Peace Accord of September 1996.

* The need to develop and consolidate new military doctrines which exclude "national security state" justifications for violations of due process of law and which clarify and delimit the proper sphere of the military, subject to civilian control.

* The relationship between local communities and military and policing authorities is largely unreformed.¹⁰⁷ Indeed, the systematic transfer of policing activities, including the investigation of threats, criminal and human rights violations, to civilian authorities is a major challenge.

These are tasks which are properly in the domain of Guatemalans, for which the United States government, through Military Assistance Programs, USAID or other instrumentalities can play only a secondary role. Happily, however, the Peace Accords have focused very centrally on all of these areas where future attention is needed.

E. Political Parties, *Comités Cívicos* and the Electoral Process

Guatemala has universal adult suffrage, a matter of importance in a multi-ethnic society where not all citizens speak the *lingua franca*. The first "free and fair" election in the post-1954 era of Guatemala came thirty one years later in 1985. As indicated above, the most recent elections were in November 1995 while the next presidential and congressional elections will be in 1999. Voter turn out has been extremely low. In 1995, despite a concerted registration and voter turnout campaign, registration remained low, while 53% of registered voters did not vote in the first round and a greater number (63%) of registered voters did not vote in the second round to pick between the top two presidential candidates. The proportion of the registered voters who actually voted in a 1994 plebiscite to determine Constitutional reforms and legislative elections was an abysmal 21%.¹⁰⁸ Seligson and associates note that about 77% of respondents in 1993 and 1995 national surveys reported being registered, but that there was a twenty percent gap between male and female registration rates. Gender and having a college education were the strongest determinants of registration rates.¹⁰⁹

Elections were administered by the non-partisan, permanent and independent Supreme Electoral Tribunal (SET), a strong institution which commands the confidence of about half the population.¹¹⁰ The elections were conducted with international observers who concluded that the election had been well managed by the Supreme Electoral Tribunal. So the problem of low voter turnout does not appear to rest with administrative issues, except for the placing of rural voting booths disproportionately in the *cabeceras municipales*, which increases travel and time costs for voters.

Important differences in gender, education, wealth and ethnicity can be found in patterns of registration and voting in Guatemala. On the whole, women are far less likely to vote than are men, a difference only partially accounted for by their lower registration rates. Less well educated Guatemalans are especially unlikely to register and to vote. Having even as few as four years of education makes a difference. Education seems to be a stronger determinant of registration and voting than does

wealth, although the two are correlated. With the exception of the Mam Indians, ladinos reported voting (in survey research) at slightly higher rates than did the indigenous peoples. But 60% of the Mam respondents in the Seligson 1995 survey reported having voted in the 1994 legislative election vs. only 48% of ladinos.¹¹¹ When asked the reasons for not voting, more than 75% of the responses given had to do with lack of the credibility of the elections, a response that is not unreasonable one year after an *autogolpe* had been attempted and in a country where an elite culture of democratic accountability had yet to take hold.¹¹²

Political parties in Guatemala are notoriously weak in fulfilling the expected function of parties in democratic society, namely one of aggregating social demands for state policy makers, socializing citizens in democratic culture, and structuring political dialogue. These are roles that are essential to the consolidation of a democracy and are roles that have not and are not currently being played by political parties in Guatemala.

Historically, political parties were organized around specific personalities and run by elites. The larger parties were frequently created or coopted by the military. Until the emergence of the Christian Democrats in 1985, existing partisan options in the post-1954 era represented only a right of center ideology. And the Christian Democrats under President Vinicio Cerezo (1986-1990) proved equally unable to move to the left of center, as Cerezo's early reformist ideas were squelched by the military.

Internal party operations have not been democratic.¹¹³ Guatemalan parties operate with only a shallow membership base. Candidates campaign vigorously during the campaign period but virtually shut down party offices between elections. The electorate tends to vote for the personality of the candidate rather than a political platform or policies perhaps because there have been so few examples of programmatically inspired governance. It is no surprise that Guatemalans expressed far less confidence in political parties than in any other democratic institution in the country¹¹⁴ nor that voter turn out is so low.

The 1995 election was a watershed year in the partisan landscape. Fourteen parties lost their registration as a result of a law requiring parties to receive 4% of the vote or have at least one candidate elected in each election. Among the dissolved parties was the *Movimiento de Acci3n Solidaria* (MAS), a right wing party popular among evangelical Protestants. It was hit particularly hard in the 1994 election because of reaction against the 1993 coup attempt by its leader, former-President Serrano Elias. MAS failed to win a single seat in Congress.

The *Uni3n del Centro Nacional* (UCN) and the *Partido Democracia Cristiana Guatemalteca* (DCG, the Christian Democrats) who held a combined total of 68 seats five years ago (in a then-larger 110 seat legislature) have atrophied dramatically.

Newspaper owner, Jorge Carpio, a founder of the UCN and twice runner-up in presidential elections, was murdered in July of 1993 one month into the presidency of his cousin, Ramiro. Many UCN supporters appear to have defected to the FRG. The DCG was the party of former President Vinicio Cerezo but as President he was unable to control the military and his administration was plagued by such corruption that it lost credibility, which it has not subsequently regained.¹¹⁵

As indicated in our discussion of Congress, two parties dominate politics in Guatemala now - the PAN and the FRG. The PAN is a classic "good government" party that grew out of a civic committee in the 1980s and is backed by the business community. This party enjoys a majority in Congress with 42 of 80 seats. The FRG is a personalist vehicle for General Rios Montt. While Rios Montt represents the right, it is unclear that FRG voters respond to a coherent right-wing ideology. Rios Montt promoted his own candidacy on a "law and order" and "morality" platform until a Constitutional Court decision nullified his candidacy, as it had in earlier presidential elections. While the FRG lost the presidential election, it remains the primary opposition party with 22 seats in Congress. It has been known to act in concert on some tactical issues with the left-wing *Frente Democrática Nueva Guatemala* (FDNG), which elected six congresspersons.

The FDNG was supported in 1995 by trade unions, peasants' organizations, human rights groups and indigenous peoples' representatives. This was the first time since 1951 that the left was allowed the political space to run candidates for elected office. However, all six FDNG congresspersons have received death threats, so the political millennium has yet to arrive. In late October of 1996, an announcement was made that the urban command of the URNG was proposing to form a new political party, the *Partido Revolucionario de Unidad* (PRU).¹¹⁶ The Salvadoran precedent suggests that such newly civilianized parties of the previously revolutionary left can fractionalize once they face the need for compromise in the hurly-burly of democratic politics. It remains to be seen whether, once legally registered, the new PRU can work in concert with the FDNG and other forces of the center-left (see below).

An alternative to political parties is emerging in Guatemala at the local level. In accord with the 1985 Constitution, *comités cívicos* (literally, civic committees) are allowed to run candidates for municipal offices. In 1995, the PAN captured one third of the 300 mayorships up for election.¹¹⁷ As the PAN is a former *comité cívico*, it is clear that the civic committee movement has renovated the partisan spectrum in the country. Moreover, *comités cívicos* won 21 mayoralities and representation on more than 100 city councils, indicating that they represent an alternative to largely discredited political parties. At one level, the *comités cívicos* afford a positive resource for consolidating democracy.

But the civic committees do not play two of the roles that political parties should play at the national level: aggregating social demands and structuring national political

dialogue.¹¹⁸ The *comités cívicos* may provide positive socialization to political life. If the older parties are to survive in the long-run, they need to reform themselves to play the roles that the civic committees cannot. There is little convincing evidence of a willingness on the part of most national parties to reform and to reach out to communities previously excluded. The PAN and the FDNG, as new parties with programmatic orientations,¹¹⁹ may have the best shot at overcoming the distrust of political parties that is so profoundly rooted among Guatemalans.

F. Regional and Local Government in the Peace Accords

A very important feature of the Peace Accords is their commitment to promote participation at the local level based on the belief that consensus-building and responsiveness in governance can and should result. In the "Agreement on Social and Economic Aspects and the Agrarian Situation," the Government of Guatemala committed itself to foster "social participation in the context of municipal autonomy, pursue... decentralization to give more autonomy to municipal governments, and consequently, to strengthen their technical, administrative and financial resources." The Peace Accords further agreed to "establish and implement as soon as possible, in cooperation with the National Association of Municipalities (ANAM), a municipal training program that will serve as a framework for national efforts and international cooperation."

In fact, prior to the post-1985 opening of the political process, the situation of local government had been dismal in Guatemala. Low or non-existent technical skills characterized municipal employees, a vertical and non-participatory culture existed (exacerbated by effective military governance in the most remote areas), poor coverage of public services, and dependence on (a low level of) fiscal transfers from the central government had been the norm. But with decisions made in the late 1980s, which have been reinforced and accelerated with the Peace Accords, much began to change vis-a-vis local governance.

As a result of the Municipal Code of 1988 and other decrees reaching back to 1985, a substantial enhancement of municipal finance has occurred. In 1985, for example, it was specified that 8% of the central government's revenue would be transferred annually to municipal governments, a provision subsequently increased (in 1994) to 10%, beginning in 1995. This is a very progressive provision for enhancing the capacity of municipal government, putting Guatemala in the lead in Central America, perhaps for all of Latin America. Also, municipalities were given in 1994 the authority to administer and enjoy revenues from a property tax previously collected by the national government, a provision that has been slowly implemented in roughly a tenth of Guatemala's 330 municipalities¹²⁰ by late 1996. Moreover, the Congress passed a decree that increased the municipality's share of a vehicle circulation tax (collected upon licensing) and in early 1996 established that a third of a three percent increase in the Value Added Tax (or IVA, in Spanish) would go to the municipalities¹²¹ and another third to FONAPAZ, the social development fund established to support the Peace Accords and a fund from which municipalities can finance some projects. As noted, that brought the IVA to 10%.¹²² The Congress also established that the hiring and firing of teachers would occur by open competition as orchestrated by the (national) Ministry of Education, but that parents' groups and local government should have input into such decisions. In sum, for the first time in the history of municipal government in Guatemala, there is money to spend, and centralized authorities have begun to demand that decision-making processes at the local level occur with citizen input.

Beyond all that, in late 1996, the Permanent Commission for Municipal Affairs and the Commission on Decentralization, two committees in the Guatemalan Congress, are drafting reforms to the municipal code to carry out commitments made in the Peace Accords.¹²³ The Peace Accords call for the new code to endorse development councils in each municipality with full citizen participation. Development councils are envisaged (from 1996 on) as bodies that will review project proposals, as well as monitor and evaluate the execution of community projects financed with a new infusion of resources

to municipal and departmental governments. The development councils were established at the regional, departmental and local level in the 1985 Constitution, but the municipal councils were subsequently suspended. The Peace Accords revive municipal development councils. A 1996 increase in the sales tax (see above) dedicates a tenth of a ten percent tax to the regional and departmental development councils, which should provide them with a capacity to act heretofore not experienced.

Several factors have heretofore constrained full citizen participation in local government. Lack of resources with which to work and a tradition of indifference on the part of municipal authorities has resulted in the lack of confidence that Guatemalans, particularly indigenous Guatemalans, have felt about local government. Seligson and associates have documented that while support for local government remains modest, reports of mistreatment by local government officials decreased between 1993 and 1995,¹²⁴ especially among indigenous peoples who were traditionally excluded from influence, and gravely so during the years of a militarized rural Guatemala, 1979-1994. And the ANAM indicates that at least 28% of mayors in office in 1996 have indigenous surnames,¹²⁵ so access for indigenous peoples may be growing as elections become more meaningful.

The greatest failure, however, is that rural indigenous women have made virtually no inroads in gaining access to power at the local level. ANAM indicates that there is no indigenous female mayor, nor any indigenous female council member, among all the 330 municipalities of Guatemala.¹²⁶ Such a condition is in clear contradiction to the intent of the Peace Accords. Clearly, much work remains to be done in incorporating indigenous females into political processes. Their multiple disadvantages (more often monolingual, with less education, more fully burdened with housework, and subject to disadvantageous family relationships in which spouses discourage independent political activity) have proven to be, heretofore, almost insuperable barriers to effective participation.

For both men and women, there are sheer physical difficulties to participation. Municipalities include a "county seat" (since municipalities in Guatemala are most like U.S. counties) and a series of small villages, often connected by extremely poor roads and non-existent or unreliable public transportation. Voting booths are often concentrated in the *cabecera municipal* ("county seat"), motivated by a desire to avoid intimidation by village strongmen. But in the worst of cases, the placement of voting booths imposes an 8-10 hour trip on citizens seeking to exercise the franchise. Consequently, turnout in elections in rural Guatemala has been low. These physical burdens typically fall on the indigenous peoples who tend to live in the remote smaller *aldeas* (villages), and to speak less Spanish. Hence, it is not uncommon to find a small ladino population in the *cabecera* generating a disproportionate percentage of mayors and *concejales* (city council persons). It takes extraordinary effort to mobilize rural, indigenous peoples for effective electoral action. NGOs have had some success at doing so, as in seen in the results of the 1995 elections, but generally with some external resources.

Additionally, reflecting a tradition of lack of participation in municipal governance, town councils typically meet in buildings designed to accommodate no citizen observation. The colonial tradition of *cabildos abiertos* (town meetings) has become associated in minds of mayors with citizen rebellion. The citizen rebellion is often in response to a closed decision-making process which generates doubt and suspicion of favoritism in allocative decisions. The defensiveness of mayors leads many not to give themselves the opportunity to understand and work with citizen groups. Moreover, there are often between five and ten candidates running for the office of the mayor, and the law (perhaps for some of the physical reasons above) provides for no run-off elections at the municipal level.¹²⁷ Consequently, the person that captures the mayor's office does so in many cases with an extremely slim electoral mandate, enjoying perhaps 20%-25% of the total vote.

The Peace Accords, however, do emphasize a number of themes:

1. The key role that NGOs are expected to play in the new era of decentralized governance.
2. The key role that new institutions are to play in providing structured access for citizen groups, such as NGOs, including these institutions:
 - a. Municipal Development Councils, as well as those at the departmental levels (discussed above);
 - b. Sectoral Commissions (in particular fields of public policy-making, such as education or health), where public and private sector interests would come together with citizens to discuss and seek improvements in service provision; and
 - c. a revival of the institution of the *Alcalde Auxiliar* (or an indigenous "deputy mayor"), once conceived as a particularly useful mediator between an essentially ladino state and indigenous communities.
3. In the immediate future, local governments are crucial to social reconstruction in the conflictive areas where the war was waged. In the longer run, strengthened municipal governance is crucial to a more responsive Guatemalan state.

With the frequency of reference in the Peace Accords for increasing citizen participation and devolution of decision-making and resources to the local governments, the time appears highly appropriate for the community of international donors to support activities that promote decentralization and greater citizen

participation at the level of the municipality, as well as enhance the skills of mayors and councils in dealing with citizen groups. An opportunity exists for breakthrough reconstructions of municipal government and for a bona-fide "participatory enfranchisement" of communities that had been effectively disenfranchised for centuries. But unless help is given to mayors, councilpersons, others in municipal government and the NGOS that will structure input into their decision-making patterns, old habits of exclusion, secrecy and mutual suspicion will be hard to break. Good social science research, commissioned by USAID-Guatemala's Office of Democratic Initiatives, suggests that there can be positive systemic-level consequences for helping citizens to have positive experiences with local government.¹²⁸

G. The Mass Media

The media in Guatemala currently play a role that neither promotes nor inhibits the democratization process. If current oligopolistic and commercialization trends continue there is a danger that the media might cede the watchdog function that they should play in a consolidated democracy.¹²⁹

There are three primary mass media for news and opinion in the country: print; radio and television. The print media are the vehicle for news and opinion of the elite and well-educated in Guatemala. There are five daily newspapers. The largest with a circulation of 100,000 to 150,000 is the *Prensa Libre*. It is a well established, right-of-center newspaper which writes safe, predictable editorials which are only mildly critical of the Government. *Siglo 21*, the second largest paper with a circulation of 80,000, was established six years ago and is the newspaper of the business elite. As with the *Prensa Libre*, it takes care not to be overly critical of the Government. In fact, when the publisher of *Siglo 21* was overly critical of the Government he received two death threats and was forced by the other directors of the newspaper to resign in May 1996.¹³⁰ However, *Siglo 21* does publish a wide array of ideological perspectives on the editorial page. And both of the largest papers provide coverage of events which is critical of government policies. *La República*, a small paper with a circulation of only 15,000, is most unreservedly pro-Government. *El Gráfico*, also a center-right newspaper with a circulation of 15,000 is owned by the Carpio family. Jorge Carpio, the newspaper's publisher and twice runner up for President as a candidate for the UCN party, was killed in a highway assault in 1993. Since his death the newspaper has suffered from lack of strong management. *La Hora* is a small left-of-center afternoon paper with a circulation of about 20,000. It is the newspaper of choice for the cultured, literary elite. It is somewhat more critical of the Government but also limits its criticisms. The publication which many think is the most objective and independent vis-a-vis the Government is a weekly magazine with a circulation of 100,000 called *La Crónica*. It is a well-written, professional, investigatory, centrist news magazine owned by a Spanish-Guatemalan, but it still lacks a commitment to verification that one would hope to see.¹³¹

Owners of the newspapers impose self censorship rather than confronting externally-imposed censorship. Since most are owned by elites who interact in the same social circles with those who govern, it appears they have an unwritten "gentleman's agreement" not to be too critical of their friends. During the Serrano *autogolpe* the press came under censorship and harassment. Acts of defiance by newspapers became rallying points in favor of constitutional rule. Nonetheless, journalists who take on sensitive issues such as human rights and military affairs have suffered harassment and threats as recently as May of 1996.

The radio is the most popular medium for news and opinion. There are about 150 radio stations in Guatemala. At its best, the quality of news reporting on the radio can be even better than in either the print or television medium. The diversity of ownership may account for this difference in quality. Some radio stations are owned by a few commercial radio chains but 35 are owned by a Mexican named Angel González.

González also owns five of the six television stations in Guatemala. His interests appear to be purely financial, as evidenced by his equal coverage of the presidential candidates and support to whomever comes to power. González' radio and television news tends to be more geared toward entertainment value rather than objective, investigatory news. González has expressed some interest in purchasing newspapers and if this happens, it is reasonable to expect a similar according of preference to advertising and entertainment over hard news and editorials in the papers. The trend toward oligopolization in the media is worrisome but not currently a real threat to democracy in Guatemala.¹³² The costs for Guatemala appear to be opportunity costs.

Apart from the five television stations owned by González there is a sixth station owned by the Army, and US cable television is penetrating the Guatemalan market.¹³³ The Peace Accords require the Army to exit the television business and there is apparent will to do so. The most important feature of the Peace Accords for Guatemalan journalism, however, is likely to be the call for linguistic diversification, calling for access to the media by indigenous peoples in Mayan languages.

The prescribed role of the media in the implementation of the Peace Accords is primarily to disseminate information in indigenous languages and to provide fair, non-discriminatory access to indigenous peoples. Under the "Agreement on the Identity and Rights of Indigenous Peoples," the Government agrees to "enhance the status of indigenous languages, opening up new opportunities for them in the mass communications and cultural transmission media...." Under a specific section on "mass media" this Accord states that the Government shall "create opportunities in the official media for the dissemination of expressions of indigenous culture and promote a similar opening in the private media..." and promote in Congress a reform of the Act on Radio Communications "to make frequencies available for indigenous projects and to ensure respect for the principle of non-discrimination in the use of the communications media." The Accords go no further in describing precisely how the Government will "promote." Some private media have accepted the spirit of the accords, prior to the definitive signing of the final Peace Accord. *Siglo 21*, for example, has begun to include a monthly supplement in a prominent indigenous language, covering current events of particular interest to the indigenous community. This is one sign that the media are beginning, of their own volition, to fulfill the role envisioned for them in the Peace Accords. However, on the negative side, a MINUGUA informant observes that no major newspaper has published the full text of the accord "On the Identity and

Rights of Indigenous Peoples," while all the other accords were, a sure indication of the anxiety that said accord has generated among ladinos.

The quality of journalism in Guatemala can fairly be judged as "immature." Many journalists are untrained in objective, investigatory and analytical reporting, in spite of impediments to entry raised by required membership in the *Colegio de Periodistas*. A good deal of gossip and hearsay finds its way into print, which subsequently require "clarifications" or retractions. Sensationalist reporting is also observed. But "*creme de la creme*" journalists do exist and are having an impact with their analytical reporting. They are often graduates of either USIS programs or USAID journalism training.

Although there is some self-imposed censorship and the quality of journalism can be improved, news and commentary on contemporary events in Guatemala are being reported. While the oligopolization of the news media is an emerging trend and investigative journalism is not as vigorous as one would expect to see in a consolidated democracy, the media do not cover up scandals and they do address most major issues. As of late 1996, the Guatemalan media are neither leading nor inhibiting the peace and democratization processes. And the mass media are supplemented by some publishing in academic circles.

IV. LEGAL FRAMEWORK

A. The Constitution

The 1985 Constitution was the sixth in the political history of Guatemala (or the antecedent Central American Republic). After the failed *autogolpe* of 1993 a package of more than 30 reforms was approved in a Constitutional Referendum in 1994 (in which participation was very, very low).¹³⁴ As previously indicated, at least nineteen constitutional reforms are foreseen as emerging from the Peace Accords.

Perhaps the most important thing to note in late 1996 about the 1985 Constitution is that neither the URNG nor the Government of Guatemala has used the process of the Peace Accords to propose convening a constituent assembly to write a wholly new constitutional document. That indicates the existence of a measure of satisfaction with many aspects of the 1985 charter. Yet numerous reforms have been proposed in the Peace Accords. In effect, the peace process has initiated a number of constitutional reform ideas that the executive, using its constitutional prerogative to propose amendments, will present to Congress on the signing of the definitive Peace Accord. The government and its armed opposition have been two sources of ideas for constitutional change, and the Assembly of Civil Society has funneled ideas to both parties in the negotiating process. So it can be assumed that the proposed constitutional changes will be widely acceptable. No major players should be seeking to undermine the results that come out of the accords.

Starting from a fundamental charter of rules (the 1985 Constitution) that Guatemalans believe has many things right, the peace negotiations have focused on those areas that can be improved.¹³⁵ Congress will need to act by a 2/3 majority to propose reforms which would then need to be approved in a national referendum by a simple majority.

We do suspect that, once again, voters will only be given the opportunity to cast a collective yes or no vote. While the "accept all or reject all" format may be less than ideal from the perspective of democracy, the need to formalize changes in the Peace Accords may supersede, in the minds of Guatemalans, the desirability of undertaking a detailed public consideration of each proposed constitutional change.¹³⁶ There is little doubt that the 1985 Constitution provided for more participatory framework with greater attention to human rights than any Guatemalan Constitution since that of 1945.¹³⁷ The burden of the changes emanating from the Peace Accords is to enhance attention to these issues while preserving the basic 1985 document, as amended in 1994. In sum, the overarching legal framework is supportive of democratization, and can be expected to become even more so in 1997. However, the task of changing 79 laws or codes (or writing new ones) growing out of the Peace Accords will put much flesh on the effort to democratize Guatemala. This task can be expected to take longer.

B. Women and the Law

The profusion of human rights and women's NGOs, as well as the exertion of leadership in the Congress, make it clear that one of the areas of jurisprudence in which Guatemala is poised on the brink of change is in gender relations. A human rights organization known as CAL-DH (Center for Legal Action on Human Rights) recently took a case to the Constitutional Court challenging a statute which made it possible for women, but not men, to be found guilty of adultery in divorce proceedings, and therefore subject to legal penalties. Somewhat to the surprise of CAL-DH the case was won, and no appeal to the Inter-American Human Rights Commission was needed. Similarly, Congress recently passed a "law on intra familial violence" which lays the basis for fundamentally different gender relationships within family units.¹³⁸ Along similar lines, the Attorney General's Office (*Procuraduria General de la Nacion*) filed suit in November 1996 in the Constitutional Court against Article 114 of the Civil Code which gave to husbands the right to determine whether their wives could work.¹³⁹ Given the earlier court decision, the prospects for overturning Article 114 appeared to be positive, but as of late 1996, there are many areas

in which statutory changes would enhance the capacity of other governmental units to intercede on behalf of more equitable gender relationships.

C. Customary Law

MINUGUA's Adviser for implementation of the Accord on the Identity and Rights of indigenous peoples argues that the whole field of *derecho consuetudinario* (customary law of indigenous peoples) is an area that could generate conflict unless more is learned about it quickly. See Appendix 1 to this document for some basic outlines. MINUGUA is working with the *Universidad Rafael Landívar* to develop activities in this area, using USAID contributions, and would like to consider joint sponsorship of additional effort.

D. Additional Legal Change

Massive amounts of jurisprudential change are implied by the Peace Accords. However, such change was underway before the signing of the Peace Accords. A major reform was that undertaken vis-a-vis the Criminal Code (see above). Appendix 2 discusses some key features of recent changes in the Criminal Code.

V. POLITICAL DYNAMICS - THE PROCESS OF POLITICS

A. The Initial Dynamics of the Peace Process

While well-documented interpretive histories of the peace process in Guatemala will come only with the passage of time, it seems clear that a turning point in the Guatemalan negotiations, as in the prior case of El Salvador, was the involvement of international agencies (and a "support group" of nations interested in peace) in facilitating the negotiating process. The turning points for Guatemala appeared to come with the signing of an April 1991 "Agreement on the Procedure for the Search for Peace" (at which point a UN observer was envisioned for subsequent negotiations, with a representative of the Guatemalan church as the conciliator); and a subsequent January 1994 "Framework Agreement...", which was the first major fruit of the transition to the UN as the "sponsoring agency" of the peace talks. Whatever the particular role of the UN in the negotiating process, the emergence of a United Nations Mission (MINUGUA) was crucial to a kind of "preemptive implementation" of the peace accords prior to the signing of the "firm and lasting peace agreement" on December 29, 1996. In fact, some provisions of the peace accords (pertaining to the police and military) had already been implemented in part in 1996.

The sheer volume of accords to be processed is impressive. The six substantive accords embrace, according to our count, 86 pages of text. This is before the "implementing agreements" were signed in late fall 1996. While an explicit accounting of the costs of the Peace Accords is not yet publicly available, estimates of US\$ 1.2 billion circulated for the six accords currently signed, with a possible escalation to US\$ 2.3 billion.¹⁴⁰ Equally important as the cost are the organizational, implementational and administrative challenges. The seventy nine laws and nineteen constitutional amendments expected will challenge not only the Guatemalan Congress, but the whole apparatus of governance. This will be truly a massive effort in "reengineering government."

B. Major Themes and Cross-Cutting Issues of the Peace Accords

The Peace Accords represent an ambitious, medium-term development plan which addresses long-standing unresolved issues of Guatemalan society. They provide a framework to move the country toward an open society with improved access for disadvantaged populations to social services, democratic processes and free market structures. The Peace Accords emphasize four key themes throughout the various documents: democratic participation, accountability of those who govern, decentralization of government so as to bring government closer to citizens and respect for the indigenous peoples.

Many of the themes are linked together. One locus for political participation that the Accords seek to enhance is local government. New or renewed institutional frameworks are envisioned as the specific venues within which non-governmental organizations (as the instruments of citizen voice) are to interact with municipal authorities (see above). Knowing that revenues have been put at the disposal of local and regional governments, this locale for interaction is seen as more likely to make government responsive to citizen needs.

But linked to this theme is that of previously excluded populations, including indigenous peoples, many of whom live in rural areas and who have not in recent years had positive experiences with local government. The Peace Accords emphasize that respect is to be accorded to indigenous peoples via numerous mechanisms, including the co-officialization of Mayan languages and the reinstitution of local development councils in municipalities to ensure that ladinos consult with indigenous peoples. One of the reasons for the lack of positive experiences is that much of rural Guatemala was subject effectively to rule by the military. Consequently, another overarching theme is the establishment of effective structures of civilian governance where they have not recently existed, the establishment of civilian control over the military and the restriction of the military to issues of territorial integrity.

Each of these themes is omnipresent in the accords. But the principle of recognizing a multiethnic, multicultural, multilingual community may in one sense be the most far-reaching. The Accords require the elimination of legal measures of discrimination against indigenous peoples (and the signing of the International Labor Organization's Convention 169 to that effect, a ratification effected in 1996). The Accords require consultation with indigenous peoples on all issues. They mandate respect for indigenous customs, law, dress, and spirituality. They require the educational system to emphasize bilingual instruction and a multicultural curriculum. At the national level, *comisiones paritarias* are to be established to ensure that indigenous peoples are consulted on a wide range of policy issues.

C. Sustaining the Initial Dynamics

Now that the final accord "for a firm and lasting peace" has been signed in late 1996, a number of challenges will present themselves. First is to manage public expectations. Although public opinion about institutional performance has been inching forward from a dreadfully low baseline, as documented in the Seligson, et al., biannual surveys, the signing of the final Peace Accord can be expected to ratchet up the level of expectations. Enough has to be shown in terms of lived experience that hope is sustained. One danger, exhibited in public opinion in neighboring El Salvador, is that people will expect peace to bring (i) visible economic improvement and (ii) an end to violence and crime. In the Salvadoran case, it brought neither, and popular expectations about "a new, peaceful, democratic El Salvador" were soon found to be exaggerated. Indeed, there was particular disappointment that political violence was replaced by social violence.¹⁴¹ The proper response should not be image-management, but rather focusing on those programmatic initiatives within the Peace Accords likely to respond to popular aspirations... among them visible investments in local development projects and visible improvements in policing and the functioning of the justice system.

As of late 1996, there was a popular disposition to trust the Arzú government because of its unexpected energy in asserting control over the military and in confronting corruption and impunity. Even with a similarly energetic performance throughout a full five year term, a challenge will remain to sustain that momentum on an institutional basis and not allow it to be dependent on a single personality. One institution that could sustain the momentum would be the *Partido de Avanzada Nacional*, but a more meaningful response would be to create non-partisan governmental structures that sustain civilian control of the military and that systematically attack and root out corruption. The Peace Accords, of course, envision just such institutional transformations.

Two interrelated challenges appear particularly thorny. The first is helping the loyalist military to buy into the Peace Accords and consequent downsizing of the officer corps, authorized troops levels and military budget as well as redefinition of missions. A buy-out plan for early retirements has just been accepted in late 1996 which may enhance the prospects of discarding those officers less loyal or less committed to institutional reconfiguration and retaining those who are committed.

However, the issue of whether to give a general amnesty to the armed forces and to the guerrilla movement is an issue that will trouble the military and may prove important in democratic consolidation. The amnesty issue had yet to be addressed in the Peace Accords (as of late October 1996). Newspaper accounts in late October

were beginning to suggest some possible compromise solutions, such as the notion articulated by Gustavo Porras Castejón, President of the Peace Commission, that:

Political crimes or common crimes, like (the killings of anthropologist) Myrna Mack, (publisher) Jorge Carpio, (president of the Constitutional Court) Epaminondas González and (the massacre of unarmed peasants) at Xamán (in late 1995 in Alta Verapaz), and others in which the security forces were involved but in which the victims were no way linked to armed confrontations, should not be included in any amnesty emanating from the peace process.¹⁴²

The implicit notion here is that many human rights violators would receive an amnesty, but that certain types of crimes against citizens exercising the participatory rights that ought to be standard in a democratic society would be subject to prosecution. Such a criterion, if articulated in the abstract in advance, could lead to the focusing of investigative resources on a finite number of cases of symbolic importance, thereby enhancing the probability of ending impunity for some. In the end, the only exit from this impasse that can be imagined is a "satisficing solution" where various sides feel that they have attained some of their basic principles. Few will like the final "satisficing solution" but at a certain point both (or all) sides will say "Ya basta [that's enough], we've attained some of our basic goals." The amnesty issue is one issue that could sidetrack momentum toward democratic consolidation, should a satisficing solution not be found.

D. Institutionalizing Openness and Civilian Control

1. One challenge in the institutionalization of a civilian polity is to reintegrate ex-guerrilla leaders, ex-combatants and the very large number of displaced civilians.

Ex-Guerrilla leaders: It is assumed that URNG leaders are going to participate openly in the political life of the country. But just how remains unclear. During the 1995 elections, some URNG support must have gone to the FDNG, as the closest available political option. As noted above, a URNG urban command has recently declared its intention to form a new political party, the Revolutionary Party of Unity. However, senior URNG commandants have not yet endorsed this initiative in public. Reforms to enhance participation by new political parties may be envisioned in "implementing agreements" of the Peace Accords which are still under discussion, for which reason statements about the intentions of those URNG leaders negotiating the accords may need to be held in abeyance.

Ex-combatants: The September 19, 1996 accord refers indirectly to the reintegration of combatants of the Guatemalan Army by noting that the Army will reduce its authorized force levels by 33% by 1997. The agreement also notes that the government will design and execute projects and programs aiming at the productive reinsertion of ex-combatants on both sides of the conflict. The timing and execution of these projects will be determined after the Agreement of Firm and Lasting Peace is signed. With regard to the PACs, the September 1996 accord establishes that all institutional relationships between them and the Army will stop 30 days after the September agreement was signed. MINUGUA will be in charge of monitoring this

process. US government sources saw that timetable for demobilization of the PACS as being "nearly attainable," with only 60,000 PAC members remaining to be demobilized in mid-October.

Concerning the reintegration of URNG combatants, the negotiating parties discussed in late 1996 the theme of "A Basis for the Reinsertion of URNG to Civil Life." The accord resulting from these discussions was signed only after this report was written. So the precise number of guerrilla members who will be demobilized was unknown, but organizations preparing for the process of demobilization have estimated between 1,000 and 3,000 URNG members. The departments of Sololá, Quiché, Huehuetenango, Alta Verapaz, Petén, and Santa Rosa have been mentioned in press reports as possible points for resettlement. However, some international observers believe that URNG resettlement projects may focus more heavily on training for civilian occupations in urban settings, and less on access to land, than did resettlement efforts in neighboring El Salvador.

Displaced persons: In late 1996, there may have been 1,000,000 internally displaced Guatemalans and 35,000 refugees still living in Mexico.¹⁴³ It is not clear how many of the internally displaced Guatemalans will seek to return to their original homes, although it can be expected that many displaced to urban environments will choose to stay in the cities. Expectations in late 1996 were that no more than one third of the remaining refugees will return to Guatemala. To receive the latter population, a resettlement strategy has been implemented by a Technical Committee composed of two representatives designed by the government, two representatives designated by the uprooted population groups, and two representatives of international refugee agencies and donors. The resettlement strategy emphasizes legal security in the holding of land. More widely, the general strategy for reintegrating displaced persons presupposes their productive integration within the framework of a sustainable and equitable development policy in the resettlement areas and regions. The hope is that the development strategy will benefit all the population groups living there, not just returnees. In this context, the institutional empowerment of municipalities and corollary organizations of civil society with which municipalities interact are presumed to be instruments that will help previously uprooted groups, as well as all other Guatemalans. Efforts are being made to inform and educate previously uprooted populations concerning their human rights, and to enhance a political culture of peace and conflict resolution among former antagonists (or among oppressors and oppressed). These activities have been executed primarily by NGOs with support from international donors.

In line with the peace agreements, the government is expected to undertake an integral strategy for rural development covering: (i) land ownership and the use of natural resources; (ii) credit systems and management mechanisms; (iii) manufacturing and marketing; (iv) agrarian legislation and legal security; (v) labor relations; (vi)

technical assistance and training; and, (vii) the sustainability of natural resources and the organization among rural populations. The target for this comprehensive strategy will be the departments that were highly involved in the armed conflict, including the six named above.

2. Institutionalizing participatory mechanisms in "political society," organizing civil society, and creating routes for communication between the two are the larger issues in which integration of ex-combatants and displaced persons are enmeshed. Even for those Guatemalans not immediately affected by political violence (although it is hard to imagine a Guatemalan family that was not), organizational life and participatory mechanisms have been unduly constricted ever since the era 1944-1954. And that earlier era of political openness did not experience all the forms of citizen participation that can happen as we approach the millennium... the technological and organizational landscapes have changed vastly since 1954.

In the abstract, two challenges occur. The first is to organize for effective expression of the interests and values of *groups never before well-represented in the making of public policy*. Such groups would surely include indigenous peoples and women, and might also entail urban informal sector workers. The second challenge is to give effective expression to the interests of *groups once included in political processes, then demobilized during the years of repression, and now subject to reactivation*. Such collectivities include organized labor (which never ceased to exist, but whose interests were held to be inimical to those of political elites) and those of rural workers organized in cooperatives or other forms of occupational organization.

Civil society programmatic interventions might well focus on these groups. If the central thrust of the Office of Democratic Initiatives is to support, figuratively, the "political enfranchisement of the previously disenfranchised," then these are the categories within civil society toward which programmatic initiatives might best be directed. The Peace Accords emphasize especially indigenous peoples and women, for which reason the first category should be accorded higher priority than the latter. National level NGOs representing women and indigenous peoples represent special opportunities for civil society programming. Since women and indigenous peoples have been excluded from participation at the local level, working to enhance participation by both at that level will be a special target in the strategy discussed below.

However, cooperatives and other forms of occupational organization may yield effective assistance to informal laborers found in both urban and rural settings. Cooperatives afford a particularly non-conflictual organizational framework for workers who have no employers, which may help members both to improve their economic productivity and provide a vehicle for expressing interests to the larger political system. Since many women (including *indígenas*) engage in informal economic activity, it is

important to recall that women can be organized not only on the basis of gender but also on the basis of occupation, a category which is not infrequently "gendered."¹⁴⁴

Whatever the form, sustaining the organization of groups in civil society is a fundamental way to make political society responsive. A disorganized and atomized civil society is a society that cannot hold the politically powerful accountable. The miracle of the 1990s in Guatemala is that a vibrant civil society is seeking actively to organize itself. While the lead must always rest in the hands of Guatemalans, external support of the organizational deepening of civil society will be appropriate to the extent that it contributes to sustainable organization on behalf of widely-shared interests.

E. Electoral and Partisan Dynamics

As Guatemala approaches the next set of national elections (in 1999), it is clear that questions of electoral strategy, including possible alliance formation, will come to be increasingly the subject of political analysis and speculation. It is far too early to project any possible outcomes to such a process.¹⁴⁵ Suffice it to indicate that the PAN is riding high in late 1996, but it carries the burden of governance at a time of massive change. Like Guatemala, it enjoys opportunity but carries the burden of implementing Peace Accords which imply nothing less than the reconstitution of the country.

Opposition political forces are ideologically fragmented (ranging across the left, center and right). Some parties (such as the PDCG and UCN) are in disarray, disrepute or lack leadership. Others (FDG) seem limited by their dependence on an authoritarian personality when the historical moment calls for a "policy wonk" to implement the incredibly complex Peace Accords. A crucial question for the next few years is whether a united left or center-left could emerge out of the FDNG, the putative PRU and other parties. If so, perhaps the Guatemalan party system might move toward a two-"tendency" framework as in El Salvador, where a strong party on the center-right¹⁴⁶ confronts a (seemingly fragmented) left. What is unique about the emergent party system of Guatemala is that the PAN affords an opportunity to create a center-right party that is firmly and fully committed to the due process of law (and to good governance).¹⁴⁷ If it sustains a commitment to principled defense of due process over immediate partisan interest and proves adept at administering the Peace Accords, its prospects may be quite bright for the next set of elections. At the same time, it should be noted that some figures within the FDNG are beginning to exhibit leadership capacity. And, as previously noted, there is at least one figure on the horizon (Rigoberta Menchú) whose electoral appeal is yet untested, but which could conceivably be powerful.¹⁴⁸

As of late 1996, the challenges to the political opposition seem more formidable than those to the governing party. It is, after all, a government of the PAN that signed Peace Accords in late 1996 and will reap the credit for doing so. Moreover, if the PAN can sustain its early attack on corruption, it may strike a very resonant chord with the Guatemalan public - in spite of economic policies that could require sacrifice in various quarters.

F. Role of International Donors in Sustaining Political Reform and Democratization

According to the planning secretariat, SEGEPLAN, the cost of implementing the Peace Accords is estimated to be about \$2.3 billion.¹⁴⁹ The government hopes to receive 73% of this total from the international community in the form of grants, loans and technical assistance. Most donors are currently in the process of making funding plans and commitments. Therefore, this report is only a snapshot of those plans, and of the donors within our view. Many donors are planning support in the same broad areas of USAID's democratization program. Coordination at the planning and implementation stages are essential to avoid programmatic duplications or contradictory strategies.

The Inter-American Development Bank (IDB) has announced that \$665 million in loans would be made during 1996-1998 for a wide variety of projects, some of which have no immediate link to democratization (such as \$150 million foreseen for highways investments, which might conceivably have an indirect effect on democratization via job creation that could ease social tension). But other IDB investments will have major direct implications for democratization; the IDB will invest in (i) modernization of the judicial system (a \$300,000 pre-investment study foreshadows a much larger loan), (ii) social investment programs (\$42.5 million for the *Fondo de Inversión Social*) which make funds available for local governments - considered the local of "responsive government" under the Peace Accords, (iii) in community reintegration for the consolidation of the peace (\$55 million in the *zonapaz* or the peace zone) and (iv) modernization of Congress (\$750,000).¹⁵⁰ The World Bank is providing a loan for integrated financial management to help implement the tax reforms initiated by the Arzú administration, but is looking to a much larger loan in the judicial sector additionally. Among other international financial agencies, the International Monetary Fund (IMF) is looking to support macroeconomic policies.

MINUGUA, in addition to its Peace Accords implementation verification mandate, has planned to support a complementary set of institutional strengthening activities. The OAS plans to invest in economic development and currently has a conflict resolution program off the ground in three selected communities. Multilateral institutions will provide much needed support to the democratization process and implementation of the Peace Accords, although the duration of that interest remains to be seen. Much of it may be conceived as a short term (2-3 year) infusion of support to help consolidate the peace.

Bilateral donors are contributing to implementation of the Peace Accords and specifically to democratic development through a variety of programs as well. The European Union announced that it will provide about \$250 million in peace-related projects, including a program in support of street children. Norway has agreed to grant \$2 million to the UN High Commissioner for Refugees (UNHCR) which will add to the \$7 million already provided for repatriation of refugees. Denmark has provided \$334,000 to the UN Trust Fund in support of the Peace Process. The Canadians support a conflict resolution program as well as provide support for a legislature strengthening program. Their focus is on creating a "port of entry" for citizens' concerns and interests. In addition, the Canadian Government and some European foundations are funding initial work in the area of indigenous customary law, as is USAID via MINUGUA. Support for FEMICA (regional association of mayors - an advocate for municipalities) is received from USAID and other donors too.

Within the U.S. Government several players are involved. Apart from the USAID program supporting democracy, USIS supports a modest program which sends journalists and others to the US to study investigative journalism either through the Fulbright Fellowship program or through the Title IV program. In addition USIS has small amounts of funding to bring U.S. academics to Guatemala to train local journalists. The U.S. Department of Justice runs an ICITAP police training program with USAID funding. Some issues of coordination appear to exist vis-a-vis that program, which may currently be conceived as contributing to "improved police performance" without a sufficient nesting in the larger environment of "the role of the police in the enhancement of democracy." The Peace Accords envision the creation of a national civilian police as an important initiative, so perhaps a justification for a wider conception of training might exist. The US Embassy complements the USAID democracy program by engaging Guatemala's leading decision-makers and opinion-makers on issues critical to the promotion of democracy. IMET and extended IMET programs for training military officers have been suspended for a number of years.¹⁵¹

The need to coordinate during both the planning and implementation stage is underscored. In a country where political will is evident and a national development plan in the form of the Peace Accords exists, many multilateral and bilateral donors as well as foundations and NGOs will lend support. As indicated below in the discussion of a strategy for the Office of Democratic Initiatives during the period 1997-2001, USAID-Guatemala will coordinate closely with other donors (inside and outside the U.S. government) during program planning and implementation phases to avoid duplication of efforts and to ensure that contradictory strategies are not employed.

VI. SUMMARY OF ASSESSMENT

Much that is positive is occurring in the Guatemalan political process. Transitions to democracy and the consolidation thereof are often marked by critical moments. Since Guatemala's critical moment of May 1993, an uneasy but real coalition of civilians seeking to accelerate and to institutionalize democratic practice has been forged. The coalition has strains and embraces social groups with differing interests. But a wide array of Guatemalans now believe that there is paramount and overriding societal interest in creating a state of law, in respect for human rights, in generating governmental institutions that are both transparent and responsive and in having a more inclusive state. The government of Guatemala and the URNG have endorsed such beliefs in the Peace Accords signed between 1994 and 1996. President Alvaro Arzú's efforts to assert civilian control of the military appear to be bearing fruit, as those in charge of the military endorse a new and restricted role for the military institution.¹⁵²

Yet some social actors have interests which can be threatened in a democratic Guatemalan state. And others have an interest in not investigating the past - a past rife with human rights violations. Moreover, while hopeful about this moment in history, Guatemalans are deeply ambivalent about whether governmental institutions can be made to work. Desirous of change, citizens are properly cautious - they will have to see accountability, transparency and responsiveness on multiple occasions before they will dare to believe that new patterns of elite behavior have taken hold.

In such a context, four areas for programmatic intervention seem crucial: (i) continued support for reform of the justice sector, (ii) continued support for efforts to improve the human rights performance of Guatemala (and to see that past violations are dealt with in a fashion that contributes to accountability and reconciliation), (iii) continued support for efforts to increase participation in political life via a variety of mechanisms - electoral participation, participation in advocacy and monitoring organizations in civil society, as well as participation in new venues (local development councils) at the level of local government, and (iv) support for Congressional modernization, which will be crucial to establishing a juridical basis for implementing the Peace Accords.¹⁵³

A wide array of programmatic interventions are conceivable. There are many roles which international donors could play in assisting the Government of Guatemala and Guatemalan civil society to consolidate democratic institutions and practice. Fortunately, international interest is great, the donors are many, and the Office of Democratic Initiatives of USAID-Guatemala can focus on a few areas. Those areas are identified and justified in the strategy which is developed below.

Among reasons for choosing these areas are that there are some positive incentives which can induce collaborative behavior in each case. Early USAID efforts at creating cooperative programs (across independent institutions) in the justice area have produced a good deal of pride among participants, who see their own institutional performance enhanced when it articulates more fully with other institutions.¹⁵⁴ A more effective justice sector will deter future human rights violations. Citizen participation in local government and in advocacy and monitoring organizations should yield public

policy benefits for the citizens who participate, which will make democratic life more attractive, and therefore more worthy of being defended. Finally, a more transparent and effective Congress will provide a counterbalance to centuries of authority overcentralized in the executive branch of government. A legislature that works will provide positive incentives to citizen participation and to the defense of democracy by elites and masses alike.

APPENDIX 1: CUSTOMARY INDIGENOUS LAW

(Derecho Consuetudinario)

Definition: Customary laws are norms that result from general, prolonged practices within a community, accompanied by a belief that the practices are obligatory. In Guatemala, customary law has been seen as "that group of norms based on juridical customs that regulate social relations in the Indian communities"¹⁵⁵ Laws based on custom are sanctioned and continuously relegitimated within a community via their usage.

Key Features of Customary Legal Systems Among Mayan Peoples: There are three key aspects to customary law among Mayan communities resident in Guatemalan and neighboring states. First is the conciliatory nature of the law. Prestigious members of the community function as mediators between parties or individuals involved in a conflict. The mediator uses persuasive resources that appeal to religious values, moral precepts, and to the collective sense of "good manners" held by the community. A second feature is the rapidity of dispute resolution procedures. A mediation process could take one day, and in exceptional cases, it could take two days, but it tends to happen quickly upon recognition of the transgression of accepted practice.¹⁵⁶ A third central feature is the oral nature of customary law. Dispute resolution takes place in the language spoken by the community. Both mediators and parties to disputes make use of oral persuasion. Fourth, its consensual nature sets Mayan customary law apart from Iberian traditions. The main goal of customary law in Guatemalan indigenous communities is to enforce compliance with community norms, even if retroactively, and thereby to sustain the community by preserving its cohesion.¹⁵⁷ Reliance is less heavily on application of penalties to transgressors (as in the formal legal system) than on inducing "voluntary" acceptance of responsibilities for the consequences of transgressions via moral persuasion. A fifth prime advantage of customary law over the formal legal system is its low cost. Since resolution procedures take place in the community, the individuals involved spend no time or money traveling to administrative centers nor in the payment of attorneys or other fees, virtues appreciated by those who are poor.¹⁵⁸

Social Foundations of Customary Law: Long-standing repetition of social usage is the primary objective condition on which customary law rests. The principal subjective foundation is the belief that common social practice is legitimate and compulsory - said practice must be accepted and complied with. As noted, Mayan customary law is oral, codified in spoken language¹⁵⁹ and via processes of socialization. Key referents of the Mayan normative order are "the sacred" and obedience, aspects that influence prescriptions for daily life via a collective aspiration to attain an harmonious coexistence among people, nature and (multiple) deities.

Transmission: Through oral expression (sometime explicit, sometimes implicit),

children receive explanations and directions about social practices. Based on the notions of respect and obedience, value transmission is intense and explicit at special moments or events in daily life as well as during special fiestas, but may also be reinforced during adulthood via participation in local politico-religious institutions, such as *cofradías*.¹⁶⁰

Customary Law and the Official Legal System: Traditionally, indigenous customary law has been subordinate to the legal system which the ladino state sought to enforce. Until the signing of the Peace Accord of March 1995, customary law was essentially ignored, unrecognized, and rejected by the Guatemalan state.¹⁶¹ However, during the five hundred years since initial European contact, some form of customary law, even if syncretic, has coexisted with the official legal system. Indigenous peoples living in their own communities have often taken first recourse to customary law. When the state penetrates indigenous communities, the members thereof may have been subjected involuntarily to the practices of the official legal system. In some cases they may have chosen recourse to the official system (to resolve disputes with those outside the indigenous communities, when customary law has been exhausted, or when their socialization into indigenous practices has been incomplete and they "seek a better deal" via the formal legal system). An uneasy coexistence has survived for centuries between a formal, written, Spanish-language legal system based on Iberian concepts and a variety of mediation- and conciliation-oriented non-written dispute resolution procedures in customary law. The March 1995 Peace Accord seeks to enhance the status of customary law, and to make it the preferred legal recourse for an array of cases not fully defined, but seemingly to encompass disputes among indigenous peoples.¹⁶²

Potential Contradictions Between the Customary and Legal Systems: The Peace Accord on the Identity and Rights of the Indigenous Peoples stipulates that the formal court system (i) will provide free interpreters to indigenous peoples who need them so as to participate in legal proceedings in Spanish, (ii) will enhance the capacity of judges and other officials in the formal justice system to function in indigenous languages, (iii) authorizes taking recourse to customary law in indigenous communities in an array of cases not fully specified,¹⁶³ and (iv) will establish an office for the defense of indigenous women's rights. While precedent for the provision of translators has dated back to the early twentieth century, in fact those provisions have almost never been fulfilled. Considering that the pre-1985 official legal system had been the expression of an authoritarian political order, and that other reform efforts in the legal system had been slow to occur in the period of 1985-1996, the recognition of a pluri-cultural legal system will require substantial legal reforms over a considerable period of time. In undertaking those reforms, three sources of ambiguity exist. First, there are a multiplicity of indigenous peoples in Guatemala, whose specific customs may vary. Second, customs may change over time, as migration and other sources of encounter between ladinos and Mayan peoples may lead to cultural syncretism. Third, one could

argue that the customary legal system tends to reproduce indigenous women's subordination since it rests on a civil-religious structure that is dominated by men.¹⁶⁴

Research on Customary Law: Multi-disciplinary research on customary law in the indigenous communities of Guatemala is needed in order to comprehend more fully possible central tendencies in or variation across peoples in dispute mediation procedures and practices.¹⁶⁵ Since both the Peace Accords and Guatemala's recent (1996) ratification of the International Labor Organization's Convention 169 call for the elimination of the *de jure* discrimination against indigenous peoples and support respect for indigenous law, research into this field will help to guide reforms of laws, legal codes and the Constitution, and to articulate more effectively a two-level legal system at the community level.

APPENDIX 2: KEY FEATURES OF REFORMS TO CRIMINAL PROCEDURE CODE.

Investigative and Prosecutorial Processes: The Code calls for the restructuring of the prosecutorial function in the judicial process and redefines the roles of those public entities concerned with the investigative process. The Code promotes a collaborative effort between the Public Ministry and the National Police with the initial investigation being the responsibility of the Prosecutor in the Public Ministry. The Code provides for a wider participation of the victims in the process as a collaborator to the Prosecutors. The Code also promotes wider use of more modern and rapid investigative procedures.

Oral Procedures: As prescribed in the Code, a combination of an oral and written approach will be developed to promote transparency of the judicial process and consequently open the process to public scrutiny. This represents a profound change moving the process from what was essentially an inquisitorial process, whereby the Judicial Branch cloistered the process in the judge's chamber, to an accusatory process that allows for public scrutiny of the criminal justice process. This change is particularly important when one considers the fact that a large percentage of the population can neither read nor write. The law directs that live testimony of witnesses and defendants will be included in the trial, and the sentencing judges must explain orally their sentences as a part of the trial's proceedings as well as the reasoning for the sentences.

Public Defense: To guarantee more efficient and effective public defense, the Code requires the development of a public defense capacity. This function is to have a general directorate in Guatemala City and offices in each department.

The Role of the Judicial Branch: With the strengthening of the role of the prosecutor to include the investigative function, the judge's role was limited to listening, reviewing and rendering verdicts based on evidence presented by prosecutorial and defense entities. Under the Code, the judge is accountable for the proceedings within the court. The Judicial Branch is required to oversee the respect for human rights throughout the criminal process and guarantee that justice is done. The Code also establishes judicial control over the execution of the sentence including the period of prison confinement.

Expansion of the Justice of Peace Courts: The Judicial Branch committed to expanding access in rural areas to all municipalities to the judicial system by increasing the number of Justice of Peace Courts. The Judicial Branch was also committed to develop guidance for proceedings at the municipality which would take into account the cultural and language differences. The Judicial Branch recognized the need to provide court translators to facilitate the court process.

ENDNOTES

1. See, *inter alia*, Robert Carmack, ed., *Cosecha de Violencia* (Guatemala: Facultad Latinoamericana de Ciencias Sociales, 1993).
2. Growing out of the Esquipulas II Agreement of 1986, Central American government committed themselves to a number of procedures that led to the end of civil wars in Nicaragua (1990, via an electoral process) and in El Salvador (1992) via a Peace Accord.
3. An *autogolpe* is a suspension of constitutional liberties and procedures by a civilian president with support from the military, much as happened in Peru in 1992.
4. These were: (i) a Comprehensive Agreement on Human Rights (March 1994); (ii) a Commission to Clarify Human Rights Violations and Violence (June 1994); (iii) On the Resettlement of Uprooted Populations (June 1994); (iv) On the Identity and Rights of Indigenous Peoples (March 1995); (v) on Social and Economic Aspects and Agrarian Situation (May 1996); and (vi) Strengthening Civil Power and the Role of the Military in a Democratic Society (September 1996).
5. AID's Global Bureau and political scientists have in recent years made distinctions between *transitions* to democracy and the *consolidation* thereof. Indeed, the Global Bureau has used a conceptualization of "pre-transition," "early transition," "late transition," and "consolidation". See USAID, 1996: "Lessons Learned Workshop Report" and citations of political scientists below (Valenzuela, O'Donnell, Linz and Stepan).
6. This topic is not addressed in the "Lesson Learned Workshop" document of USAID's Global Bureau.
7. See J. Samuel Valenzuela, "Democratic Consolidation in Post-Transitional Settings: Notion, Process and Facilitating Conditions," in Scott Mainwaring, Guillermo O'Donnell and J. Samuel Valenzuela, eds., *Issues in Democratic Consolidation: The New South American Democracies in Comparative Perspective* (Notre Dame, IN: University of Notre Dame Press, 1992): 57-104.
8. See O'Donnell, "Illusions About Consolidation," *Journal of Democracy*, 7,2 (April 1996): 34-51.
9. Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe* (Baltimore: Johns Hopkins University Press, 1996).
10. Those are: a civil society, a political society, the rule of law, a usable state bureaucracy, and an institutionalized economic society. In elaborating their framework, they note a number of misunderstandings found in popular discourse (*viz., inter alia*, that markets conduce automatically to democracy, hence, the mere prevalence of market mechanisms will assure democratic consolidation).
11. *Maya* are any one of twenty nine ethnic communities who speak one of a larger family of related languages or descend from those who spoke such languages and identify themselves as culturally distinct from Euro-Americans, *Ladinos* are those who

see themselves as mestizo (of mixed European and indigenous descent), *Garífuna* are of Afro-Caribbean descent, initially concentrated on the Gulf Coast areas; and *Xinca* speak a language descended from the Pipil. Twenty of the Mayan nationalities reside in Guatemala, others in Mexico, Belize and Honduras. See Demetrio Cojtí, *Políticas para la reivindicación de los mayas de hoy: Fundamentos de los Derechos Específicos del Pueblo Maya* (Guatemala: Editorial CHOLSAMAJ, 1994). While accepting the general outline of ethnicities in Guatemala proposed by Cojtí, we follow Richard Adams, a distinguished anthropologist of Guatemala, in emphasizing subjective self-definition (how people define themselves) as the key to understanding ethnic identity in Guatemala. Adams, presentation to "Strategy Development Workshop," USAID Mission, October 11, 1996; interview with Adams by MSI assessment team, October 12, 1996.

12. World Bank, *World Development Report* (Washington, D.C.: Oxford University Press, 1994): 220-221, cited by Mitchell Seligson, with the professional collaboration of Tania Palencia, "Options for Strengthening Civil Society in Guatemala," paper prepared in response to PIO/T 520-0000.07-3-6001, USAID-Guatemala, June 7, 1996, p. 6.

13. A recent United Nations Development Program report indicates that 87% of Guatemala's indigenous population falls into the categories of the "poor" or "extremely" poor. Poverty is typically measured by the capacity to purchase 2 market-baskets of basic foodstuffs [for "poor families"] or 1 market-basket of basic foodstuffs [for "extremely poor families," on the assumption that poor families spend half their monetary income on food and the other half on complementary basic necessities (housing, clothes, transport, etc.). See *Prensa Libre*, "Ochentisiete por ciento de indígenas del país son pobres, informa la ONU," 17 octubre 1996, p. 20.

14. Specifically, the departments of Alta Verapaz (64.84%), Baja Verapaz (57.29%), Huehuetenango (53.53%), Jalapa (51.41%), and Quiché (50.11%) have reported rates of rural poverty that exceed fifty percent. Source: *Manual de Operaciones, Fondo de Inversiones Sociales*, Guatemalan Government (nd), cited by Mitchell Seligson in Seligson (with the professional collaboration of Tania Palencia), "Strategies for Strengthening Civil Society in Guatemala: An Approach from Above and Below," prepared in response to PIO/T 520-0000.078-3-6001, USAID-Guatemala, p. 14. The corresponding percentages indigenous in these departments are: Alta Verapaz (89.0%), Baja Verapaz (55.5%), Huehuetenango (63.8%), Jalapa (37.4%), and Quiché (83.4%). Ibid., p. 16. The correlation is strong but not perfect. The data from Alta Verapaz and Quiché make it clear that there are some indigenous peoples who are not rural poor, while those from Jalapa reveal that some of the rural poor are likely to be Ladinos.

15. See Juan Pablo Pérez Saínz, "Ciudad de Guatemala en la década de los ochenta: crisis y urbanización," in Alejandro Portes y Mario Lungo, coordinadores, *Urbanización en Centroamérica* (San José: FLACSO, 1992): 247-248.

16. The best estimate in 1989 was that 42% of the informal workforce was female, and 18% of the informal workforce were indigenous peoples. One could infer that

almost all of that 18% would be encompassed in the 42% of the informal workers who are female, if only because females are far more likely to identify themselves as indigenous peoples than are males. *Ibid.*, 249.

17. Although the militarization of rural Guatemala and massacres committed against whole villages displaced many Guatemalans from the most rural areas in the 1980s.

18. Seligson, "Options...", p. 6.

19. World Bank, *World Development Report*, 1994 (Washington, D.C. and Oxford: Oxford University Press, 1994): 162, cited in Seligson, "Options...", p. 6.

20. Economist Intelligence Unit, *Country Report: Guatemala*, 3rd Quarter, 1996, p. 14.

21. Seligson, "Options...", pp. 6-8. Indeed, the primary developmental challenge of Central America has been that sustained growth before the "lost decade of the 1980s" did not produce a substantial reduction in poverty. Estimates of the percentages living in poverty in 1980 were: Guatemala (71.1%); El Salvador (68.1%); Honduras (68.2%) and Nicaragua (61.5%); figures which were appreciably worse in 1990: Guatemala (75.0%); El Salvador (71.0%); Honduras (76.0%); and Nicaragua (75.0%). See FLACSO, *Perfil Estadístico Centroamericano* (San José: Facultad Latino Americana de Ciencias Sociales, 1993): 11.

22. Seligson, "Options...", 23. For comparable data, see FLACSO, *Perfil...*, 28, 30.

23. *Perfil...*, p. 24. The data from this source are not directly comparable to those from 1996 cited below, hence, no comparisons are made within Guatemala over time.

24. From mean percentages of 0.93% (health) and 1.7% (education) of the GDP in the era of 1990-1995, respectively. See A. Yzaguirre, "Resumen del proyecto de presupuesto para 1997 presentado al Congreso de la República," internal analysis of USAID-Guatemala, October 1996.

25. Only the VIIIth region, the very remote Petén, was projected to have constant spending at +0.8%. Regions other than Metropolitan Guatemala City all are scheduled for increases between the 25.7% and 44.7% projections mentioned in the text.

Yzaguirre, *ibid.*, annex.

26. These are summaries of more extensive definitions, sometimes running two pages per definition, from the Archbishop's Human Rights Office reports.

27. There are methodological grounds for caution. Note that "assassinations" are defined by their appearance in the mass media. Improved performance by the mass media in reporting crime could account for the large jump between 1993 and 1994 in the count of assassinations. In addition, the largest number of assassinations are characterized as "cause unknown," which does not preclude political motivations.

28. See *Prensa Libre*, "Guatemala ocupa segundo lugar en secuestros en América Latina: GAM," 29 octubre, 1996, p. 4; *Siglo Veintiuno*, "La Policía Nacional ha registrado este año 194 secuestros," 2 noviembre 1996, p. 8; *Siglo Veintiuno*, "Condenan a muerte a tres implicados en secuestro," 12 noviembre 1996, p. 5.

29. In one survey done in 1995, "personal insecurity" concerns ranked second (17% mentions) to "economic issues" (> 30%) as the greatest problem facing Guatemala.

30. See assessment documents, Cambridge Group Report to USAID-Guatemala,

November, 1996.

31. Alfonso Martínez, "Recent Economic Developments: First Semester of 1996," USAID-Guatemala, October 1996.

32. Survey research published in the press in October of 1996, indicates that more than 90% of the Guatemalan public approves of the way that President Arzú had handled the revelation of systematic corruption in the Customs Agency.

33. Linz and Stepan, *Problems...*, p. 16.

34. While the national press published each of the other five previously-signed Peace Accords in their entirety, no newspaper published the full text of the accord on indigenous peoples.

35. Juan Linz and Alfred Stepan, "Toward Consolidated Democracies," *Journal of Democracy* (April 1996): 27-28, 33.

36. *Ibid.*, p. 33.

37. Richard Adams notes that the estimated percentage indigenous in censuses of the 1893 and 1921 as roughly 62-64%.

38. And it should be noted that the 1994 Census contains data on language usage which have not yet, in late 1996, been released. Note that Seligson and colleagues find, however, that language usage gives the smallest estimate of the size of the indigenous population. See Young, Seligson and Jutkowitz, "Guatemalan Values...", p. 5.

39. See Leopoldo Tzian, *Mayas y Ladinos en Cifras: El Caso de Guatemala* (Guatemala City: Cholsamaj, 1994).

40. *Ibid.*, p. 49. While the precise percentages may be subject to question, the fact that these are the four largest Mayan communities is clear. Transliterated spellings are taken from the text cited above. Kaqchi' is more commonly known as Kaqchikel. On differences in transliteration, see Demetrio Cojtí C., *Configuraci\`n del Pensamiento Político del Pueblo Maya*, 2da parte (Guatemala; Editorial Cholsamaj, 1995): 114-115.

41. Cojtí C. *Configuraci\`n...*

42. Young, Seligson, and Jutkowitz, *Guatemalan Values...* 1996, pp. 53-57.

43. See Oficina Nacional de la Mujer, Ministerio de Trabajo y Prevision Social, *Cuarta Conferencia Mundial de la Mujer: Acci\`n para la igualdad, el desarrollo y la paz* (Guatemala, 27 diciembre 1993): 19 - 23.

44. See section on "Women and the Law" below.

45. In addition, other military intelligence services are to be moved so as to be subject to civilian control.

46. See Young, Seligson, Jutkowitz and others, *Guatemalan Values...* 1996.

47. For an overview, see David Holiday, "Mapeo de las organizaciones de la sociedad civil en Guatemala," prepared for the Interamerican Development Bank, September 1996.

48. In January to September of 1993, 54 institutions received their *personería jurídica*, in October-December (after the reform), 75 did, while in 1994, 433 institutions did so. See Holiday, "Mapeo...", p. 13.

49. The Peace Accords refer to "social organizations" that represent women,

indigenous peoples, labor and those of a civic or humanitarian nature.

50. These will be committees of equal numbers of ladinos and indigenous peoples to examine public policy and the functioning of national institutions.

51. Mitchell Seligson is among those who express concern about distinguishing between NGOs which represent civil society well and those which do not. See Seligson, et al., "Strategies..."

52. Young, Seligson, Jutkowitz and others, *Guatemalan Values...* 1996, p. 7.

53. Harry Jager, "Los gobiernos locales ante los acuerdos de paz en Guatemala," *Revista de la Federación de Municipios del Istmo Centroamericano (FEMICA)*, no. 6 (agosto 1996).

54. After losing as its nominee in 1990/1991.

55. *Prensa Libre*, "Acciones contra los contrabandistas cuentan con abrumador apoyo popular," 13 octubre 1996.

56. The Guatemalan Constitution would require the calling of a Constituent Assembly to modify this particular provision, which should be a disincentive to such thinking.

57. This provision has been challenged repeatedly by Rios Montt or his agents, and been upheld by the Electoral Tribunal and the Constitutional Court.

58. Indeed, the FRG candidate finished first in 18 of 22 departments in the runoff with Arzú, who won the presidency only by virtue of a very strong showing in the capital city.

59. On the curious nature of support for the PACs and Rios Montt, see David Stoll, *Between Two Armies in the Land of the Ixil* (New York: Columbia University Press, 1993).

60. She first achieved visibility via her autobiography, published in English as *I, Rigoberta Menchú, an Indian Woman in Guatemala* (London and New York: Verso, 1984). The original title in Spanish was *Me Llamo Rigoberta Menchú y Así Me Nací\ la Conciencia* (Barcelona: Editorial Argos Vergara, 1982), a somewhat more evocative title.

61. Ms. Menchú was invested as *Doctora Honoris Causa* at the Universidad San Carlos de Guatemala on 18 October 1996, at which point she delivered an address. Elegant, analytical and confident in Spanish, resplendent in indigenous dress, externally legitimated by the Peace Prize, the causes in which she invests her moral authority will benefit... unless she should choose poorly. So far she has not.

62. A graduate thesis has been written in the U.S. analyzing "Rigoberta jokes" which circulate among ladinos in Guatemala.

63. We use the phrase "corporate entities" not in the sense of corporations in the United States, but rather in terms of interest groups representing a social aggregation.

64. The full text of the ASC's proposals have been published by several organizations, among them, the Latin American Social Science Faculty (FLACSO) and FUNDAPAZ.

65. For a brief analysis of the ASC, based on interviews with participants and

observers, see Tania Palencia and David Holiday, *Hacia Un Nuevo Rol Ciudadano para Guatemala*, International Centre for Human Rights and Democratic Development (Montreal), August 1996.

66. COPMAGUA initially included the Council of Mayan Organizations of Guatemala (COMG), the Mayan Unity and Consensus Body (IUCM), the Permanent Assembly of the Mayan People (APM), and the Assembly of Mayan Languages of Guatemala (ALMG), a state-sponsored but independent body. Later the Union of Mayan People of Guatemala (UPMAG) joined.

67. See Stener Ekeren, "Institutional Development among Mayan Organizations in Guatemala," a paper presented at the seminar Institutional Development in an Indigenous Context, Oslo, Norway, June 7, 1996.

68. A large group of NGOs are organized in different coordinating bodies: the Coordination of NGOs and Cooperatives for the Accompaniment of the Internal Armed Conflict (CONGCOOP), the Council of Development Institutions (COINDE), ASINDES, COMG, Consejo de Bienestar Social, Consejo de Fundaciones Privadas. The first four of these form the Foro de Coordinaciones de ONGs de Guatemala, while the latter two have closer connections to the private sector. For further discussion of NGOs in Guatemala, see Kees Biekart, *La Cooperaci n no gubernamental europea hacia Centroam rica: la experiencia de los ochenta y las tendencias en los noventa*, PRISMA, El Salvador, November 1994.

69. The URNG suffered considerable embarrassment with the revelations in late October that *Comandante Isa as* (Rafael Augusto Baldiz n N  n  ez) had masterminded the kidnapping of an 86 year-old, wheelchair-ridden matriarch of a wealthy family (Olga de Novella), that Isa as had been captured by the government and exchanged for Ms. de Novella. The embarrassment was such that to resume the peace negotiations *Comandante Gaspar Ilom* (Rodrigo Asturias), the leader of the Revolutionary Organization of the People (ORPA), renounced his role at the bargaining table and thereby assumed symbolic responsibility for the kidnapping. Asturias professed ignorance of the act, but by his renunciation of a leadership role made it possible for negotiations to resume.

70. Urban commando units of the URNG have recently announced their intention of forming the *Partido Revolucionario Unitario*, a not-so-subtle allusion to the old party of the 1944-1954 revolutionary period.

71. A recent URNG communique reported by AFP noted a less than democratic posturing by the commanders, who wrote to their followers that the *Comandancia* would be drawing up the principles and policies of the new party and that "*democratismo*" would not be permitted.

72. For some descriptions of the private sector, see Marcie Mersky, "Empresarios y Transici n Pol tica en Guatemala," unpublished manuscript, CSUCA, Nov. 1988, and Lu s Everardo Estrada V squez et al., *Los Empresarios como actores sociales frente a la modernizaci n del Estado y la sociedad Guatemalteca*, Direcci n General de Investigaci n, Universidad de San Carlos, Guatemala, 1994.

73. Cited in Jorge Escoto and Manfredo Marroquin, *La AID en Guatemala*,

CRIES/AVANCSO, 1993, p. 120.

74. Interview with Ministry of Finance official, October 1996.

75. Gustavo Porras, "Proyecto de Apoyo a la Democracia y a los Derechos Humanos de la Persona en Guatemala," informe para CECI, Guatemala, Junio 1994.

76. There was a one-time tax imposed in mid-1996 (*Impuesto de Solidaridad, Extraordinario y Temporal (ISET)*), but the government's calculations of the revenues it will yield are overstated, according to various economic think-tanks.

77. Carlos Morales Monzón, "Un presupuesto con ingresos inciertos," *Crónica*, 18 de octubre de 1996., p. 35.

78. See Timothy J. Steigenga, "Protestants and Politics: Guatemala and Costa Rica," Ph.D. dissertation, Department of Political Science, University of North Carolina at Chapel Hill, May 1996.

79. See Victor Gálvez Borrell, *Estado, Participación Popular y Democratización*, FLACSO, Guatemala, 1994.

80. *Country Document: Guatemala*, IDB, March 1996.

81. In addition to sources cited in the introduction, see from *Realidad Socio-Económica de Guatemala*, UNICEF/Editorial Piedra Santa, Guatemala, 1994.

82. *Ibid.*, p. 160.

83. See Santiago Bastos y Manuela Camus, *Los Mayas de la Capital: un estudio sobre identidad étnica y mundo urbano* (Guatemala: Facultad Latinoamericana de Ciencias Sociales, 1995).

84. Cited in interview with Reginald Todd, Director of CEDEL program, 10/16/96.

85. To put matters into perspective, Costa Rica has a unicameral Legislative Assembly of 57 members, with over 900 support staff provided, including a team of five or six staff persons for each legislator, plus support for each legislative committee. By contrast, Guatemala has a legislature of 80 members, with fewer than 300 support personnel, none of which are available to individual legislators, and only two of which serve each committee. The "professional" staffers are often picked on political, rather than technical grounds. As of late 1996, there were only five of the nearly 300 Guatemalan support staff who had the technical expertise to write a draft piece of legislation.

86. This may be one factor leading to the "urban bias" of public spending. Representatives living in the capital city, far from their constituencies, may find it easier to spend money on paving additional streets in Guatemala City than on building farm to market roads.

87. Another institutional design issue is the fact that all *congresistas* are elected concurrently, every four years, with no staggered terms. That increases vulnerability of Congressional leadership to short-term electoral shifts.

88. A mid-1995 national survey commissioned by the Office of Democratic Initiatives, revealed that the mean rating by Guatemalans of their Congress on a 100 point scale was only 39, below the midpoint (which would represent a "neutral" evaluation). That evaluation had not changed since 1993. It remained below the

evaluation given the Army (also below the mid-point at 42), but considerably above the evaluation accorded to political parties (at an abysmal 23 on the 100 point scale). See Malcolm B. Young, Mitchell Seligson, Joel Jutkowitz and others, *Guatemalan Values... 1996*.

89. The action by PAN to expel a congressperson from the party in response to a perceived abuse of congressional authority may have been one symbolic turning point. A continuation of survey research in 1997, as currently projected by the Office of Democratic Initiatives, remains crucial to monitoring possible changes in public opinion toward major institutions.

90. The review was undertaken by the United Nations Development Program. See *Prensa Libre*, "Agenda de paz incluye 19 reformas constitucionales y 71 nueva leyes," 14 octubre 1996, p. 6.

91. See Appendix 2 for more detail.

92. *El Gráfico*, "Barrientos propone crear instituto de defensoría pública," 24 octubre 1996, p. 7.

93. See, inter alia, J. Samuel Valenzuela, "Democratic Consolidation..." pp. 59, 62-66 and Gabriel Aguilera, "The Armed Forces, Democracy and Transition in Central America," p. 33 in Louis W. Goodman, Johanna S. R. Mendelson and Juan Rial, *The Military and Democracy: The Future of Civil Military Relations in Latin America* (Lexington, MA and Toronto: Lexington Books/D.C. Heath, 1990).

94. The phrase is that of Louis W. Goodman and Johanna Mendelson, Assessment Team Planning Meeting, Friday, October 4, 1996, Washington, D.C. This section of the report is highly tentative, pending a visit to Guatemala by Drs. Goodman and Mendelson, in early 1997 or sooner, as rapidly as local conditions and their schedules permit. Drs. Goodman and Mendelson are collaborative associates of the MSI Assessment and Strategy Development Team. As in other Central American cases, the Guatemalan military has a presence in activities which elsewhere are civilian: a radio station, ship registries, certain roles in trade and business.

95. For recent reviews of the human rights situation, see reports by the Director of the United Nations Mission for Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Assessment on Human Rights in Guatemala, with accompanying notes by the Secretary-General. The most recent reports are those of February 24 and July 19, 1996. See also Human Rights Watch/Americas, *Human Rights in Guatemala during President de León Carpio's First Year* (New York, 1994); and, for a review of high profile cases involving the United States' government, see Intelligence Oversight Board, *Report on the Guatemala Review*, June 28, 1996.

96. Much of this paragraph is structured by an interview with Dennis Keller, U.S. military attaché in Guatemala, October 12, 1996.

97. For an insightful, if not universally appreciated among the human rights community, commentary on why civilians participated in such activities, see David Stoll, *op cit*.

98. The number of arms put in the hands of civilians probably never exceeded 15%

of that total, as the arms distributed to the Civil Defense Patrols (or PACs) were rotated among the civilians during their tours of duty on walking patrols. A late 1996 newspaper article reports a Guatemalan military estimate of total PAC membership (300,000) much lower than that of other analysts. See *Prensa Libre*, "Desmovilizaci\u00f3n de las PAC se reinicia la pr\u00f3xima semana," 11 noviembre 1996, p. 6.

99. The guerrillas used violence, too, targeting mayors and finca owners early on, then later members of PACS, their families and, in general, persons suspected of collaborating with the military.

100. The peace negotiations were more complex because of the multi-ethnic complexity of Guatemalan society, some specificities of negotiation process (the "guerrilla party" had to negotiate not only for itself but in response to proposals made not only by the Government of Guatemala but also by the Association of Civil Society) and because of the very extensiveness of the human rights violations committed during the war.

101. Concern remains that ex-military commissioners retain influence in the communities in which they ruled, and some remain armed, even if not with military-issued weapons.

102. That is, a solution "minimally acceptable" to all stakeholders.

103. For one illustrative description, see *Prensa Libre*, "Vecinos de La Tinta lincharon a sujeto por robo de gallinas: Alta Verapaz," 15 October, 1996. Informed observers, including members of the human rights community in Washington, note that this is not an isolated example.

104. Academics seem to be developing some such analytical capacity. *El Gr\u00e1fico* reported on the first such study of which this team is aware in its edition of 22 October 1996. See "En Guatemala: Impacto fiscal y macroecon\u00f3mico de los gastos militares," p. 37.

105. That danger is provoked by our assumption that "there are virtually no totally innocent parties in the Guatemalan military."

106. President Arz\u00fa refused to move into the Presidential Residence, indicating that "he refused to be a 'captive' of the EMP."

107. In 1995, so-called "Peace and Development Committees" were created, entailing an estimated 80,000 to 90,000 former members of PACs scattered geographically throughout the country, which were to carry out civic action programs, such as cleaning parks or building roads. In President Arz\u00fa's administration, the Army decided that they would no longer support these "transitional agencies" and abandoned them, leaving the ex-PAC members on their own. The question of the nature of the relationship between these demobilized members and the communities of which they are a part, just as with the demobilized "military commissioners," remains potentially troublesome. The Army will allegedly retrieve all weapons from the PACs as they demobilize, but it also provides a kind of "decommissioning orientation" as to what such groups would have to do to reconstitute themselves as a civilian NGO with juridical personality, were 60% of the local community so to desire. Human rights groups remain properly concerned about all such groups emerging from the PACs.

108. Young, Seligson, Jutkowitz, *Guatemalan Values...1996*. Actually, the

percentage voting in the legislative elections was 21%, while those voting in the concurrent referendum on constitutional reform was an even more appalling 16%.

109. Young, Seligson, Jutkowitz, *Guatemalan Values...* 1996, pp.48-54.

110. Few Guatemalan institutions enjoyed even that modest level of support in 1995. *Ibid.*, p. 6.

111. Seligson and his co-authors are careful to note that both figures are over reports, reflecting "social desirability distortion effects," a phenomenon found elsewhere, not only in Guatemala.

112. Young, Seligson, and Jutkowitz, *Guatemalan Values...* 1996, p. 63.

113. For example, the idea of a party primary as part of a process to select a presidential nominee is unknown in Guatemala. The composition of party lists for the sixteen congressional seats selected by proportional representation is a closed process as well.

114. Young, Seligson and Jutkowitz, *Guatemalan Values...* 1996, p. 7.

115. Indeed, allegations surfaced in the press in late 1996 that Cerezo had been the recipient of largesse from Alfredo Moreno Molina, the contraband king whose corruption of the customs agency was the subject of extension public scrutiny in late 1996. These allegations are likely to harm the DCG even further.

116. *Prensa Libre*, "La URNG anuncia formaci\ del Partido Revolucionario de Unidad," 21 october 1996, p. 8.

117. Thirty municipalities elected local authorities for five year terms in 1993.

118. There has been talk of reforming the electoral law to allow *comités cívicos* to run candidates for Congress. Depending on the overall distribution of votes across party fractions (or party groups inside the Congress), the consequences of doing so might be either positive or negative. If no party had a well-disciplined majority, having a number of representatives from *comités cívicos* might lead to the need to constantly reassemble majorities and to court individual representatives from the *comités* so as to govern.

119. One might describe the programmatic orientation of the PAN as "neoliberal in macro-economic policy but with a 'good government' orientation implying a belief that there are some positive roles for government, if undertaken with probity and transparency" while the FDNG appears to represent a social democratic orientation, with a much greater commitment to social welfare "investments."

120. Guatemala is divided into 22 Departments which are further divided into 330 municipalities.

121. That provision alone would bring 396 million *quetzales* (US\$ 66 million) to municipal governments.

122. President Alvaro Arzú initially had other plans for the increase of three percent, but had to accept the Congressional earmarking. The 1997 budget proposal projected yields of 396 million quetzales (roughly 66 million US dollars) for each of the three benefitted parties - the municipalities, FONAPAZ and the regional and departmental development councils.

123. In so doing they have taken into account suggestions of ANAM, mayors and the executive branch of government.

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124. Young, Seligson, and Jutkowitz, "Guatemalan Values... 1996," p. 17.
125. And, of course, some mayors without clearly indigenous surnames might also be indigenous. ANAM estimates that the total percentage of indigenous mayors could surpass 40%. Information provided by Harry Jager, Director of LOGROS project, USAID, 28/xi/1996.
126. Jager, *ibid*.
127. Note that in the 1995 presidential election, there was a significant fall off between participation in the first round and in the second, run-off round.
128. Seligson, "Options..." and "Strategies."
129. One possibility of filling the void may be access to international cable television, although it is hard to see how access to international media will play a role in holding Guatemalan elites responsible for their actions on a day to day basis.
130. José Rubén Zamora, former publisher of *Siglo XXI*, was threatened, elected to leave that paper and founded a new paper, *El Periódico*, which began publication in November 1996.
131. For example, retractions are common in issues subsequent to initial reports.
132. The only real limitation on media ownership or access is that the owners be Guatemalan. González' wife is Guatemalan and primary owner of the stations. In late 1996, Congress was debating a new radio law that would redistribute radio and television frequencies and reissue licences. Independent radio station owners feared that commercial chains would buy them out and the radio chains feared in turn that González would buy them out. The threat is that an existing oligopolization of news and opinion formation in Guatemala might be further concentrated, reducing the diversity of views expressed and leaving Guatemala without one potential check on the powers of the state. The vibrancy of publication activity at research institutes such as FLACSO, ASIES, AVANCSO and CHOLSAMAJ, however, makes it clear that educated readers, opinion-makers and decision-makers will have access to a variety of views, if they seek them out.
133. With over 300,000 cable television subscribers, Guatemala ranks among the largest cable markets in Latin America. Exposure to U.S., Mexican, and other Latin American stations allows Guatemalans an alternative vehicle for receiving international news and opinion. However, at the moment, cable is likely to reach primarily those whose lives are already "media-rich."
134. One could vote up or down on the whole package, but could not vote for or against specific reforms. Those voting for the constitutional reforms consisted of only 16% of registered voters.
135. Another reason for not seeking to write a new constitution is to keep the reform process manageable. The negotiations between the Government of Guatemala, the URNG and the Assembly of Civil Society are sufficiently complex and lengthy so as to generate hope among all parties for speedy follow-up action to the Peace Accords.
136. And, when Guatemalan antagonists of forty years have finally negotiated agreements on fundamental issues, we suspect that foreign governments would do well

to see those agreements formalized quickly without excessive attention to detail... lest a painfully negotiated peace come unglued.

137. There were Constitutions written or promulgated in 1956 and 1965, which superseded the 1945 document.

138. See *Prensa Libre*, "Ley para erradicar la violencia familiar," 17 octubre 1996 (*Desfile* section), p. 50; and *Prensa Libre* "Víctimas de violencia familiar serán protegidas por las autoridades," 25 octubre 1996.

139. *Siglo Veintiuno*, "Plantean inconstitucionalidad contra artículo del Código Civil," 2 noviembre 1996, p. 6.

140. Not everyone believes that costs will run so high.

141. See Kenneth M. Coleman, José Miguel Cruz and Peter J. Moore, "Retos para consolidar la democracia en El Salvador," *Estudios Centroamericanos*, 571-572 (mayo-junio 1996): 415-440.

142. *El Gráfico*, "Crímenes comunes no serán incluidos en amnistía," p. 6.

143. See *Siglo Veintiuno*, "Gobierno proyecta instalar oficina en Comitan para agilizar retornos," 28 octubre 1996, p. 8.

144. Edwin Aguilar has found that occupational organization of informal sector workers leads to a more positive evaluation of a responsive political system. See Aguilar, "El sindicato me tiene con vida acá: Informal Labor, Occupational Organization and Political Behavior in Costa Rica," unpublished doctoral dissertation, Department of Political Science, University of North Carolina at Chapel Hill, June 1995.

145. As of late 1996, one possible nominee for the presidency by the PAN might be Oscar Berger, who was reelected as Mayor of Guatemala City in 1995. He is close to President Arzú. He obtained more votes than did Arzú in the capital city. In effect, given Arzú's dependence on Guatemala City for his narrow margin of victory, it might be argued that "Berger's coattails carried Alvaro Arzú to the presidency." However, it is far too soon to project either party nominees or presidential candidates.

146. Legitimate debate can exist over whether ARENA in El Salvador represents the right or the center-right.

147. In contrast to El Salvador, where ARENA's origin as the party of Roberto D'Aubisson, an alleged human rights violator, will always raise suspicions about its commitment to due process.

148. On the other hand, Ms. Menchú might well be the subject of racist and sexist slander. A recent M.A. thesis at a U.S. university was based on analysis of over 500 "Rigoberta jokes" which had circulated in Guatemala by the early 1990s.

149. Economist Intelligence Unit, *Country Report: Guatemala*, 3rd quarter, 1996.

150. See *Prensa Libre*, "Banco Interamericano de Desarrollo autoriza préstamos por US\$665 millones para Guatemala," 5 noviembre 1996, p. 51.

151. In late 1996, the Guatemalan press did report visits by U.S. military officials undertaken with an eye toward assessing whether the resumption of U.S. military assistance would be appropriate.

152. *El Gráfico*, "A retiro voluntario 91 militares," 13 noviembre 1996, p. 5.

153. But Congress can also play a critical role in making executive agencies more

transparent and accountable (by developing an oversight capacity) and in providing citizens with a direct sense of accountability, via developing a sense of constituency service among congresspersons - a sense which has never previously existed.

154. Here we refer to participants in the *centos de enfoque* described below.

155. Luis Padilla, "La investigación sobre el derecho consuetudinario indígena en Guatemala," en Rodolfo Stavenhagen y Diego Iturralde, comps., *Entre la ley y la costumbre: el derecho consuetudinario indígena en América Latina* (México, D.F.: Instituto Indigenista Interamericano e Instituto Interamericano de Derechos Humanos, 1990): 264.

156. According to indigenous customary law, if someone violates an important customary practice, the crisis created by the "transgressor" has to be solved immediately. See Edgar Esquet y Carlos Ochoa, compiladores, *El respeto a la palabra: El orden jurídico del pueblo maya* (Guatemala: Editorial Cholsamaj, 1995): p. 65; and Rolando López, "El Derecho Consuetudinario," *Revista Rutzijol* (16-30 de Junio, 1994): p. 22.

157. Esquet y Ochoa, *op cit.*, p. 36.

158. López, *op cit.*, 1994.

159. Mayan languages contain words that refer to obligatory customs. For example: the word *xajan* is used to admonish listeners about expected behaviors and actions condemned by the deities, by the community and by its authorities. *Xajan* makes reference to harmonic relations between an individual, her/his surrounding community and nature. We can observe the use of the word *xajan* in the following phrase from Kaqchikel: -Xajan mu na nimajta kitzij ri a te' a tata', ma ri a wujk'ualjunan xitikib' an chawe. Translation: It is *xajan* not to obey the advice from your parents, if you disobey, your children will do the same. In this context, the word has two different moral prescriptions: i) it advises the listener of proper behaviors to follow, but ii) it predicts negative consequences if the norm is not followed.

160. In indigenous communities that have preserved traditions dating back to initial contact with colonial authorities, a civil hierarchy overlaps with a religious hierarchy. The realm of the religious and the civil interact in the institution of the *cofradía*, an initially religious organization via which indigenous men acquired social recognition and trust as they moved up in a hierarchy according to age and the type of responsibilities that they discharge in the community. Those responsibilities often had and have to do with the organization and financing of religious fiestas. However, leaders of the *cofradía* have often been selected by local communities or mayors as *alcaldes auxiliares*. When that happens, they are also popularly known as *alcaldes indígenas*. See Padilla, *op cit.*, p. 266-267. Note that the Peace Accords address the issue of the selection of *alcaldes auxiliares*, requiring that mayors in the future pick from nominees generated by the community.

161. See Padilla, *op cit.*, and Rolando López, "El Derecho Consuetudinario," *Revista Rutzijol*, 16-30 de Junio, 1994.

162. This assumption comes from none of the scholarship we have consulted, but rather from our collective reading of the Peace Accord of March 1995.

163. Provision E.3 of the pertinent accord notes that "...the Government undertakes to

promote.... the development of rules of law which would recognize the rights of indigenous communities to manage their own internal affairs in accordance with their customary norms, provided that the latter are not incompatible with the fundamental rights defined by the national legal system or with internationally recognized human rights." A subsequent provision (E.4.a) calls for the Government to propose "... with the participation of representatives of indigenous organizations, legal provisions calling for the inclusion of cultural expertise and the development of mechanisms which would permit the community authorities to indicate the customs which constitute their set of internal norms..."

164. Provision II.B.1 of the accord indicates that: "It is recognized that indigenous women are particularly vulnerable and helpless, being confronted with twofold discrimination both as women and indigenous people, and also having to deal with a social situation characterized by intense poverty and exploitation..."

165. Padilla, *op cit.*, makes this case, as does Rachel Sieder, "La Transición Democrática y la Construcción de un Estado de Derecho Pluralista en Guatemala: Notas para la Investigación del Derecho Consuetudinario," *Polémica*, no. 2 (Julio-Diciembre 1996).